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Government by injunction has been most severely condemned, not altogether justly, but at the same time not altogether without reason. The application of this extraordinary and most arbitrary of all legal remedies by courts of equity has been with most marked frequency of late years, especially in the settlement of disputes between labor and capital, and has given rise to much discussion as to its probable abuse. A recent decision by Judge Hammond of the United States District Court at Memphis, handed down a few weeks ago, enters largely into the ethics of the question and arrives at the conclusion that the jurisdiction of equity is practically supreme and unlimited in the protection by injunction not only of property, but of personal rights as well, and irrespective of the fact whether the act complained of is punishable as a crime or not. The case which has been responsible more than any other for this clear extension of equity jurisdiction is that of *In re* Debs, 158 U. S. 564. The exact holding of this case was that a court of equity has jurisdiction to enjoin the obstruction of the mails and highways used in interstate commerce, though such obstruction amounts to a public nuisance, for which a criminal prosecution would lie, and that the punishment imposed by such court for violation of its injunction is not an exercise of criminal jurisdiction. The point, however, which distinguished this case from others and made it the stepping stone, whether so intended or not, to a wider exercise of equitable powers of injunction was the strong disclaimer by the court of any desire to rest its decision on any rights of property which the United States might or might not have in the carriage of the mails as a prerequisite to the jurisdiction of the court to restrain or remove by injunction any obstruction to the exercise of any of the powers of government where no other equally satisfactory or adequate remedy is at hand. This absolutely dismisses the question whether the act enjoined might be punished as a crime or not, and its effect is clearly observed in the decision of Judge Hammond in the case of Southern Railway Co. v. Machinists' Union, just referred to. This case was a suit for injunction prohibiting members of a certain labor union from the commission of acts of violence and intimidation against non-union employees of the complainant. The court concerned itself principally with what it termed the personal liberty of the non-union workmen, and based its right to grant relief on the ground that no police or other protection was afforded them, "which is really," says the court, "the chief reason why resort must be had to courts of equity; ordinary police protection being ineffective in fact whatever cause may produce that insufficiency; the condition of non-protection, in fact, being all with which equity is concerned." Then follows this sweeping statement of the extent of the court's jurisdiction to grant injunctions in such cases, which we believe evidences the most advanced position which has yet been taken on this important question:

"The suggestion that the same constitution which safeguards the personal liberty of the 'scab' and his employer guarantees to its violators trial by jury for their crimes or offenses arising out of the violation is not an answer to the fact that prosecutions and consequent convictions are either wholly wanting or ineffectual for the protection of the 'scabs' and their employers. The Debs case settles that the same constitution also guarantees the equitable remedy. It is not, indeed, as the able counsel of defendants argued, a concurrent remedy with that afforded by criminal prosecution, and it is one dependent, as he says, upon conditions in which mere police failure is not included, but that failure is none the less the occasion of the resort to equity—the paramount necessity for it. The equitable remedy is a wholly independent one arising out of conditions of inadequacy of that other likewise wholly independent remedy of an action at law for damages, and upon neither of these does the remedy of criminal prosecution have the least bearing. Except that if the criminal law be so thoroughly executed that there could be no violation of or offenses against the personal liberty of the 'scabs' and their employers, there would then be no occasion for actions

at law for damages or bills in equity for injunction. That is all the relation that the criminal law has to such suits as this. *Re* Debs, 158 U. S. 564, 594."

We have quoted this case in advance of its appearance in the Reporters, because of its unique importance in this day of labor troubles and disputes. Undoubtedly this extension of equity jurisdiction, although not abrogating the general rule that equity never interferes by injunction to prevent the commission of a crime, nevertheless undermines it with another exception so far reaching as to eventually make the rule itself a very precarious foundation to build upon. Whether this will be a calamity is not altogether certain, depending more upon the character of the men into whose hands this extraordinary power is committed than upon any inherent injustice in the rule itself.

NOTES OF IMPORTANT DECISIONS.

UNFAIR TRADE — MALICIOUSLY INDUCING ONE'S CUSTOMERS TO QUIT TRADING WITH HIM.—The unanimous judgment of the House of Lords in Quinn v. Leatham is particularly important, because it clearly shows that an action can still be maintained against persons who maliciously induces a man's customers not to deal with him, or his servants not to continue in his employment. The contrary has, no doubt, been inferred by many people from the decision of the same tribunal in Allen v. Flood. In that celebrated case, however, said the lords who decided Quinn v. Leatham, the facts on which the majority based their decisions were that the appellant merely informed the respondents' employer that, unless he dismissed the respondents, his other workmen would refuse to work for him, and to give such information truthfully, however maliciouly, cannot infringe any right. Yet the right of every man to earn his living in his own way, to deal with persons who are willing to deal with him, is recognized by law. An interference with this right, it is now laid down, by threats of serious damage or annoyance is *prima facie* actionable, even when the coercion is applied, not to the man himself, but to others for the purpose of injuring him. Whether in a particular case the interference with a man's business or employment is wrongful must be to a large extent a question of fact. In Quinn v. Leatham the jury found that the appellant had acted wrongfully and maliciously, and this verdict was abundantly justified by the facts of the case.—*Solicitors' Journal.*

CARRIERS OF PASSENGERS—REASONABLENESS OF TIME LIMIT REGULATIONS.—It is almost an axiom of law that carriers will be permitted to make any regulations for the conduct of its business which is reasonable. An American, however, feels any limitation on his personal rights so sensitively that he will instinctively protest against it. This fact probably accounts for the continuous litigation over this question, and especially that phase of it regarding the right of a carrier to place a time limit on its contract of transportation by merely printing same on the ticket, but not bringing it expressly to the attention of the passenger. This was the question discussed in the case of Coburn v. Railroad, 29 South Rep. 882, where the Supreme Court of Louisiana held that a purchaser of a railroad passenger ticket must take notice of the time limitation printed or stamped on the face of the ticket, and that a limit of one day on such a ticket was not unreasonably short.

Subject to the qualification of reasonableness, time limits in railroad tickets are valid, and the holder of such a ticket must start upon his passage within the time prescribed or forfeit his right to passage. Elmore v. Sands, 54 N. Y. 512; Shedd v. Railroad, 40 Vt. 88; Lillis v. Railroad, 64 Mo. 464; Heffron v. Railroad, 92 Mich. 406; McRae v. Railroad, 88 N. Car. 526; Pennington v. Railroad, 62 Md. 95; Howard v. Railroad, 61 Miss. 194; Powell v. Railroad, 25 Ohio St. 70. The conditions generally reads that "this ticket will not be good unless used on or before a certain date. This, however, does not require him to commence his passage until midnight of the last day, although he cannot reach his destination until after the expiration of the time limited. Auerbach v. Railroad, 89 N. Y. 281; Georgia, etc. R. R. v. Bigelow, 68 Ga. 219; Evans v. Railroad, 11 Mo. App. 463; Lundy v. Railroad, 66 Cal. 191, 56 Am. Rep. 100.

LANDLORD AND TENANT—"CROPPERS"—FAILURE OF TENANT TO COMPLY WITH CONTRACT.—A "cropper" is a term applied to a person hired by the land owner to cultivate the land, receiving for his compensation a portion of the crops raised. In a number of states, statutes have been passed defining the rights and liabilities attaching to this peculiar tenancy. These statutes are little more than declaratory of the common law. Thus, in the recent case of Wood v. Garrison, 62 S. W. Rep. 728, the Supreme Court of Kentucky held that § 2327 of statutes, providing that "when a tenant enters or holds premises by virtue of a contract, in which it is stipulated that he is to labor for his landlord, and he fails to begin such labor, or if, having begun, without good cause fails to comply with his contract, his right to the premises shall at once cease, and he shall abandon them without demand or notice," applies where the tenant is to furnish labor and the landlord everything else, and the tenant is to receive as compensation either money or a given proportion of the crop; and therefore where such a tenant, after beginning to work, failed to continue, the landlord was entitled to maintain forcible detainer. The court said in part:

"It is everywhere admitted (see cases previously cited) that under a pure or unqualified cropping contract the entire legal ownership of the crop is in the owner of the land until division. As was said by Rodman, J., in Harrison v. Ricks, 71 N. Car. 11: 'A cropper has no estate in the land. That remains in the landlord. Consequently, although he has in some sense the possession of the crop, it is only the possession of a servant, and is in law that of the landlord. The landlord must divide to the cropper his share. In short, he is a laborer receiving pay in a share of the crop.' Under the facts of this case as stated above, appellee appears to come within the definition of the term 'cropper,' which is a tenancy contemplated and included in section 2327. If such a tenant fails to begin the labor contracted to be done by him, or, having begun, without good cause fails to continue it, the landlord may maintain forcible detainer, and dispossess him; and he might also be entitled to such of the remedies provided in section 2325 as were applicable to the state of the case."

STATUTES — CONTEMPORANEOUS CONSTRUCTION.—One of the most insidious temptations of courts or judges in arriving at the meaning of a statute is to resort to extrinsic or contemporaneous construction, whenever the words taken in their ordinary meaning do not appeal to their preconceived opinion as to what the law ought to be, or what they think the legislature had in mind when they passed the law, and the mistake is not unfrequently made that to find out and effectuate the *intention* of the legislature in passing a certain act is perfectly legitimate, whether there is any ambiguity in the meaning of the words or not. The intention of the legislature or the evils they intended to remedy, are absolutely immaterial, where the words they have used, when taken in their ordinary usage, admit only of one interpretation. This rule was well stated by the court in the case of Southern Railway Company v. Local Union, decided October 5, 1901, by Judge E. S. Hammond of the U. S. District Court at Memphis. The statute which was the subject of construction provided that it should not be lawful for any person knowingly to hire, decoy or entice away, any one, male or female, who is at the time under contract or employ of another; and any person so under contract or in the employ of another leaving their employ without good and sufficient cause, before the expiration of the time for which they were employed, shall be liable for the damages the employer may reasonably sustain by such violation of the contract. The court said:

"It may be conceded that it is not at all likely that the Tennessee legislature intended to make by this statute a law against strikes and strikers and the labor unions. But this consideration can not control the courts in the construction of statutes, if they be broad enough in the language used to cover the case of strikes and the labor unions. If the legislature intends to limit its enactment they must do so by the terms of the act itself, and no other limitation is authoritative where the language is unambiguous and construes itself. It is not permissible to go outside the statute, plain in its words, as covering all labor contracts and laborers, and to say, on any consideration whatever, that there was an intention to limit it to a particular class of laborers, white or black, or however else such classification may be made, as of agricultural or industrial workmen; not when the subject-matter and the language used comprehend these and all other classes." The following authorities are directly in point and sustain the position of the court: Lake County v. Rollins, 130 U. S. 662; St. Paul, etc. Railroad v. Phelps, 137 U. S. 528; Hamilton v. Rathbone, 175 U. S. 414, 419; Dewey v. United States, 178 U. S. 510, 521.

FIRE INSURANCE—CONSTITUTIONALITY OF ANTI-COMPACT LAWS.—Anti-trust legislation under the spur of popular prejudice sometimes oversteps the bounds of reason by attacking legitimate enterprise and infringing the right and freedom of contract. This is especially so in statutes attempting to control the right of insurance companies to enter into agreements fixing the rates of insurance. This is a very important question at the present time, and one on which the authorities are not altogether clear or harmonious. In the recent case of Niagara Fire Insurance Co. v. Cornell, decided by the United States Circuit Court for the district of Nebraska, the question of the constitutionality of a law which prohibited insurance companies organized and existing under the laws of other States from entering into any agreement with respect to the question of rates, was decided in favor of the insurance companies. The Nebraska legislature in 1897 passed a bill in reference to trusts, defining the same, providing means for their suppression, and for the punishment of the violator of the statutes. It specifically referred to fire insurance companies, and in the definition of a trust recites that "a combination of capital, skill, or acts by persons with intent to prevent competition in fire insurance, or by which they shall in any manner establish or settle the price of fire insurance, with the intent to prevent free competition, is in violation of the statute." It will be well to note in this connection that this language is much stronger than has usually been employed by legislatures in arriving at the same end. The complainants insisted that the statutes were in conflict with both the state and federal constitutions for various reasons, and prayed for an injunction to restrain the state through its officials from enforcing the statutes. The case of Paul v. Virginia was cited by the attorney-general as a strong argument in favor of any law which the State of Nebraska might make permitting foreign insurance corporations to do business in that state; and the court held that questions of the license fees, and fees for local agents, as well as respecting suits to be brought against insurance companies, and many other

subjects of a similar character might be legislated into the statute books, and that the foreign insurance companies would be required to consent thereto, and that the state had a right to exclude foreign corporations from doing business therein. The court didn't hold the statute to be unconstitutional because it provided a fee to the prosecuting attorney in each case brought against insurance companies, although the Supreme Court of the United States in Texas and Kansas cases had held similar laws to be unconstitutional, but it did hold that the statute in question was unconstitutional because under the terms of the statute "an agreement to lower the rates becomes unlawful if that statute is valid." The court intimates that such a provision is not the exercise of a police power on which so much stress was laid by the attorney-general in his application of the case of Paul v. Virginia.

The statute under consideration was intended to prevent any combination of capital or skill, or acts whereby the price of any article, commodity, use or merchandise may be fixed, and is intended to prevent restrictions in trade, the limiting of the production, or the increase or decrease of the price of any commodity, and to prevent competition in insurance, or in making, transporting, selling or purchasing any article, or to fix any standard whereby its price to the public shall in any manner be established, or to enter into any contract whereby any party is not to deal in any article below a certain price, or by which the parties agree to keep the price at any sum. The statute also declares that any persons violating the same shall be conspirators, and punished accordingly, that any corporation of the state violating the same shall have its corporate existence declared forfeited by suit, and any foreign corporation violating the same is to be driven from the state, that all contracts in violation of the statute are absolutely void, that any purchaser of a commodity in violation of the statute can plead the violation as a complete defense, and any person injured in his business, property or employment by any violation of the statute can recover damages, any person or corporation accused of violating the statute can be compelled to furnish all books and papers on the question, and finally the statute exempts any assembly or association of laboring men from the provisions of the statutes. The court in its decision says:

"It cannot be said of this statute that any one material provision may be held void and allow the balance of the statute to stand and be enforced. Of some statutes that rule can be invoked. If this statute is valid two men in the same line of business cannot form a partnership if he tends to maintain prices. Nor can a corporation be formed by two or more, if by so doing the price is maintained. The statute is not a step, but it is a long stride, hundreds of years backward, when monarchs, cabinet officers and every parliament decreed the price to be paid for a day's labor, and the cost of all necessaries of life, even to the loaf of bread." The court further says on this same subject: "Jurists and statesmen, practically without conflict, have repeatedly said 'the right of contract is the greatest of all blessings enjoyed by a free people, and guaranteed us by a constitution so long as that instrument may last." And the court quoting from the constitution that "no man shall be deprived of the equal protection of the laws," calls attention to the fact that "the statute expressly excepts from its provisions assemblies or associations of laboring men." The court holds that the case of Waters-Pierce Oil Co. against the state of Texas, 177 U. S. 28, does not cover this case because that in the Texas case the corporation entered the state and was licensed at a time when there was a valid statute prohibiting certain corporations from doing certain things, and that the complainants in the present case were rightfully in Nebraska when these illegal or unconstitutional statutes were passed. The court distinctly holds that the legislature of Nebraska can place onerous burdens on foreign insurance companies, and they can discriminate in favor of Nebraska insurance companies, but says that "the statutes with which I am dealing apply to all insurance companies, resident and foreign, and the statutes are equally void, in my judgment, as to all."

TERMINATION OF EXTRAORDINARY LIABILITY OF CARRIER OF FREIGHT.

It is the policy of the law to secure from common carriers the highest degree of care and diligence with reference to the goods intrusted to them. Before the introduction of railroads the carrier by land was liable for loss of or damage to goods intrusted to him for transportation till they reached the hands of the consignee, unless the loss or damage was occasioned by the act of God or of the public enemy.[1] The rule that the liability of the carrier is that of an insurer against loss or damage[2] has been long held to be subject to exception in cases where the loss or damage is occasioned by,

1. The act of God;[3]

[1] Merchants' Disp. T. Co. v. Hallock, 64 Ill. 286.

[2] Willock v. Pa. R. Co., 166 Pa. St. 184, 45 Am. St. Rep. 674; McCarthy v. L. & N. R. Co., 102 Ala. 193.

[3] In this term are included accidents which are the result of natural causes, and which are beyond human power to prevent; as earthquake, lightning, death, etc. Long v. Pa. R. Co., 147 Pa. St. 343; Merchants' Disp. T. Co. v. Smith, 76 Ill. 542; Maybin v. S. C. R. Co., 8 Rich. (L.) 240, 64 Am. Dec. 753.

2. The act of the public enemy;[4]
3. The act of the public authority;[5]
4. The act of the shipper;[6]
5. The inherent nature of the goods.[7]

The basis of the carrier's libility is the trust reposed in him; and the liability can arise on a complete delivery to him of the goods for transportation, and the delivery must be for immediate transportation; otherwise, the liability of the carrier will be that of warehouseman merely.[8] However, to constitute delivery and acceptance no receipt or other writing is necessary.[9] Thus, to illustrate, if goods are delivered at a railway company's storehouse to be kept till further orders and directions as to shipping, destination, etc., the company is liable, not as carrier, but as warehouseman.[10] And so, after the goods are delivered to the carrier, if anything remains to be done by the shipper to conform to the law or the contract, the relation of shipper and carrier has not begun.[11] Where a railway company allows wool to be stored in its warehouse without any arrangement as to shipment, it will be held liable in case of destruction by fire only on proof of gross negligence.[12] The liability of the carrier when acting in that capacity has been explained as the liability of an insurer; and the exceptions to the rule have been set out. As contradistinguished from the high degree of liability attaching to the carrier as a carrier, a warehouseman is responsible for ordinary care merely, and is not liable for the destruction of the property by fire or by inevitable casualty, or for its loss by theft.[13] It will be clearly seen that by reason of the different duties and the varying nature of the liability it is frequently of the utmost importance to determine when the carrier's duties as a carrier cease, and when his duties and consequent liability as a warehouseman begin. As to this there are two widely divergent views. But fortunately the courts of the various states have, as a general thing, taken their stand squarely on the one side or on the other. One set of courts follows the rule laid down in 1854 by the Supreme Court of Massachusetts, and which is known as

The Massachusetts Rule.—This is, that the liability of carrier as carrier is ended when he has carried the goods to their destination and has placed them in his warehouse to await delivery to the consignee. From that moment he is responsible as warehouseman only. This rule has been adopted in Illinois, Indiana, Iowa, Georgia, Missouri, North Carolina, Tennessee and South Carolina. The other view was adopted by the New Hampshire court in 1856, and is commonly referred to as

The New Hampshire Rule.—Under this view the liability of the carrier, as such, is perpetuated until the consignee has had a reasonable time after the arrival of the goods to inspect them and take them away in the usual course of business. This is the rule more generally adopted, as will be seen by reference to the decisions hereafter cited from the courts of Alabama, Arkansas, Connecticut, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Nebraska, New York, New Jersey, Pennsylvania, Ohio, Texas, Vermont, Wisconsin and West Virginia.

1. *The Massachusetts Rule.*—The leading

[4] Coggs v. Bernard, 2 Ld. Raym. 909; Liv. L. C. Liverpool S. S. Co. v. Phœnix Ins. Co., 129 U. S. 397. Mobs, robbers, and strikers cannot be classed as public enemies, as the term is used in this exception; otherwise with pirates who are the Ishmaelites of commerce. R. Co. v. Nevill, 60 Ark. 375, 46 Am. St. Rep. 208. While a mere refusal of his employees to work does not relieve the carriers from liability (Pittsburgh, Ft. Wayne & C. R. Co. v. Hazen, 84 Ill. 36, 25 Am. Rep. 422; Haas v. K. C., Ft. S. & G. R. Co., 81 Ga. 742), the rule is otherwise where there is an accompanying feature of intimidation and mob violence which the carrier cannot overcome. Empire Transp. Co. v. P. & R. Coal, etc. Co., 35 L. R. A. 623, and cases cited in note.

[5] As where goods are seized in transit, and condemned to destruction because they are infected by disease, or where intoxicating liquors are destined to a use contrary to the laws of the states. R. Co. v. O'Donnell, 49 Ohio St. 489, 34 Am. St. Rep. 579.

[6] As where he conceals from the carrier the character of the goods shipped, and such concealment is the cause of the loss. McCarthy v. Louisville R. Co., 102 Ala. 193, 48 Am. St. Rep. 29.

[7] As perishable fruits or vicious animals. Cent. R. Co. v. Haselkus, 91 Ga. 382, 44 Am. St. Rep. 37; Maynard v. S. B. & N. Y. R. Co., 71 N. Y. 100; Betts v. C., R. I. & P. R. Co., 92 Iowa, 343.

[8] Iron Mt. R. Co. v. Knight, 122 U. S. 79; Barron v. Eldredge, 100 Mass. 455.

[9] L. & N. R. Co. v. Fulghan, 91 Ala. 555; The Caledonia, 43 Fed. Rep. 681.

[10] Schmidt v. C. & N. W. R. Co. (Wis.), 63 N. W. Rep. 1057.

[11] Dixon v. Cent. R. Co. of Georgia, 35 S. E. Rep. 369.

[12] Tex. Cent. R. Co. v. Flanary, 50 S. W. Rep. 726; Hopsgood Plow Co. v. Wabash R. Co., 61 Mo. App. 372.

[13] Am. Brewg. Asso. v. Talbot, 141 Mo. 674; Francis v. Dubuque, etc. R. Co., 25 Iowa, 60.

case is Norway Plains Co. v. Boston, etc., R. Co.,[14] though the rule was announced in the previous case of Thomas v. Boston, etc., R. R. Co.[15] Under this rule the carrier's liability does not cease until the goods are unloaded from the car,[16] though neither notice nor delivery to the consignee personally is necessary to relieve the carrier from his liability as insurer.[17] "It is part of the company's duty as carrier," said the Supreme Court of Massachusetts in Rice v. Boston & W. R. Co.,[18] "when it has brought the goods to their destination, or to the terminus of its road, to unload them with due care and to place them where they will be reasonably safe and free from injury." The contract for carriage calls, not merely for the transportation to a particular point, but also for the delivery of the merchandise to the consignee, or putting it into a suitable place where it can be received by him. Thus, where a cargo of assorted coal was unloaded on the ground at the place of destination, and could not be gathered up without taking up dirt and mixing the different kinds of coal, there was a recovery for the damage.[19]

In Norway Plains Co. v. Boston & M. R. Co.,[20] these points were covered by Chief Justice Shaw in the following language: "Although there is no separate charge for storage, yet the freight to be paid, fixed by the company, as compensation for the whole service, is paid as well for the temporary storage as for the carriage. This renders both the services, as well the absolute undertaking for the carriage, as the contingent undertaking for the storage, to be services undertaken to be done for hire and reward. * * * We may then say in the case of goods transported by railway, either that it is not the duty of the company as common carriers to deliver the goods to the consignee, which is more strictly conformable to the facts, or, in analogy to the old rule that delivery is necessary, it may be said that delivery by themselves as common carriers to themselves as keepers for hire, conformably to the agreement of both parties, is a delivery which discharges their responsibility as common carriers. If they are chargeable after the goods have been landed and stored, the liability is one of a very different character, one which binds them only to stand to loses occasioned by their fault or negligence." If the consignee is not ready to receive the goods on arrival, the carrier can discharge himself of his liability by storing them safely in charge of competent servants, and ready to be delivered when called for by the proper parties.[21] The rights of the parties are not affected by the fact that the merchandise is placed on a platform, instead of being unloaded directly into the warehouse.[22]

Modification Depending on the Nature of the Consignment.—No absolute rule can be laid down which will cover, in all cases, the acts which will relieve the carrier of his liability. In an important Iowa case[23] Rothrock, J., said that the carrier's "duties must vary according to the nature of the consignment. In the cited cases[24] the property was such that it could be removed from the cars and placed in an ordinary depot warehouse. But in the case at bar the grain was in bulk. It was not expected by the parties that it would be removed from the car by the railroad company and carried into its warehouse. It was its duty to place it in such a position on its track that it could be safely, and with a reasonable degree of convenience, unloaded by the plaintiff; and it was the right of the plaintiff to refuse to unload the car until it was so placed; and so long as the defendant, in obedience to its obligation as a common carrier, was required to move the car upon the track, its liability as such common carrier did not cease." And so in Pindell v. St. Louis & H. R. Co.,[25] it was held

[14] 1 Gray, 266, 61 Am. Dec. 423.

[15] 10 Met. 472, 43 Am. Dec. 444.

[16] Chicago & N. W. R. Co. v. Bensby, 69 Ill. 630.

[17] Porter v. Chicago, R. I. & P. R. Co., 20 Ill. 407, 71 Am. Dec. 286; Merchants' Disp. T. Co. v. Moore, 88 Ill. 138; Chicago & N. W. R. Co. v. Jenkins, 103 Ill. 599; C., R. I. & P. R. Co. v. Kendall, 72 Ill. App. 105; Mohr v. Chicago & N. W. R., 40 Iowa, 579; Cin., etc. Air Line R. Co. v. McCool, 26 Ind. 140.

[18] 98 Mass. 212.

[19] See Barron v. Eldredge, 100 Mass. 455, 1 Am. Rep. 126.

[20] *Supra.*

[21] Gashweiler v. Wabash, St. L. & P. R. Co., 83 Mo. 112; Buddy v. Wabash, St. L. & P. R. Co., 20 Mo. App. 206; Cahn v. Mich. Cent. R. Co., 71 Ill. 96.

[22] Cahn v. Mich. Cent. R. Co., 71 Ill. 96.

[23] Independence Mills Co. v. Burlington, C. R. & N. R. Co., 72 Iowa, 555. In this case the case of Mohr v. Chicago & N. W. R. Co., 40 Iowa, 579, and Francis v. Dubuque & L. C. R. Co., 25 Iowa, 60, were referred to as laying down the rule in Iowa.

[24] See previous note.

[25] 41 Mo. App. 84.

that if the railroad company notifies the consignee of the arrival of a carload of wheat, and places it in a safe place awaiting his action, it is not liable, in the absence of negligence, for the subsequent destruction of the wheat by fire. Other cases than those already cited holding that a railroad company becomes a warehouseman, as matter of law, when the duty of transportation is over and it has assumed the position of warehouseman as a matter of fact, will be found in the note below.[26]

California.—The Massachusetts rule was adopted in this state by the case of Jackson v. Sacramento Valley R. Co.,[27] but subsequently the rule was changed by legislative enactment providing that "if, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it." And the sentiment of the courts of that state is in harmony with the change; for, in Wilson v. Cal. Cent. R. Co.,[28] Van Clief, J., said: "The rule requiring railroad companies to give notice to consignees of the arrival of their goods, so far as practicable, in order to reduce the liability of the carrier to that of a warehouseman, irrespective of statutory enactment, seems to be founded upon the better reason, and supported by the weight of authority in the states and in England."

Georgia.—In Rome R. Co. v. Sullivan,[29] one of the judges made some observations seeming to indicate the necessity of notice, but such remarks were *obiter dicta*, the question of notice not being involved. In a late case[30] it was held that notice is unnecessary if the goods arrive in the usual time, the carrier being relieved of his carrier's liability in such a case by depositing the goods in a safe place ready for delivery on demand.[31] But if the freight does not arrive within the accustomed time, notice must be given and a reasonable time allowed for removal. The decision of this case was effected by a provision of the Code.[32]

Tennessee.—In this state, by an act of 1870, the carrier was required to give notice of the arrival of goods at their destination, but this has been construed not to extend the carrier's liability. Tennessee, though it has been said in some places to be among those states which follow the New Hampshire rule, has uniformly and firmly adhered to the Massachusetts doctrine.[33]

2. *The New Hampshire Rule.*—The leading case on this line of authority is Moses v. Boston & M. R. Co.,[34] where the Massachusetts doctrine, while acknowledged to be of a practical character, is said to sacrifice the approved principles of the common law to considerations of convenience and expediency. McClellan, J., in Columbus & W. R. Co. v. Ludden,[35] in an able opinion, declared the position of these courts to be "that the liability of a common carrier by rail as an insurer of the consignment continues throughout the transit and until the goods have been unloaded from the cars and deposited in the depot or warehouse of the carrier, or otherwise made ready for delivery, and a reasonable time thereafter has elapsed to afford the consignee an opportunity to come and take them away, and that only after the lapse of a reasonable time, beginning when the transit is complete and the shipment is ready for delivery, will the liability, in the absence of special stipulation of the carrier, as such be converted into the less rigid and exacting liability of a warehouseman for reward." "The rule adopted in Massachusett," said Seymour, J., in Graves v. Hartford & N. Y. S. B. Co.,[36] "puts an end to the carrier's responsibility as such, just where that responsibility is of the highest value to the shipper. Between the deposit

[26] Rice v. Hart, 118 Mass. 201, 19 Am. Rep. 433; Blaisdell v. Com. R. R. Co., 145 Mass. 132; Neal v. Wilmington & W. R. Co., 53 N Car. 482; Turrentine v. Wilmington & W. R. Co., 100 N. Car. 375; Norris & E. R. Co. v. Ayers, 29 N. J. L. 393; McCarty v. N. Y. & E. R. Co., 30 Pa. St. 247; Allen v. Pa. R. Co., 3 Pa. Sup. Ct. Rep. 235; Shenk v. Phila., etc. Co., 60 Pa. St. 109, 100 Am. Dec. 541; Shepherd v. Aristol & E. R. Co., L. R. 3 Exch. 189.

[27] 23 Cal. 268.

[28] 94 Cal. 166, 17 L. R. A. 685.

[29] 14 Ga. 277.

[30] S. W. R. Co. v. Felder, 46 Ga. 433.

[31] Almond v. Ga. R. & Bkg. Co., 95 Ga. 725.

[32] See also West. & A. R. Co. v. Camp, 53 Ga. 596; Ga. & A. Ry. v. Pound (Ga.), 36 S. E. Rep. 312.

[33] East Tenn., V. & G. R. Co. v. Kelly, 91 Tenn. 699, 17 L. R. A. 691; Butter v. East Tenn. & V. R. Co., Lea, 32; South. Exp. Co. v. Kaufman, 12 Heisk. 165

[34] 32 N. H. 523.

[35] 89 Ala. 612.

[36] 38 Comm. 143, 9 Am. Rep. 369.

of the goods on the platform and their delivery to the consignee, they are exposed to theft, depredation and injury by strangers and by the carrier's employees. In making delivery, care is needed to avoid mistakes and attention required to see if the good are uninjured. During the whole process of delivery, until fully completed, the goods should remain in the care of the carrier upon the full responsibility pertaining to him as such." "If the consignee is present upon the arrival of the goods, he must take them without unreasonable delay. If he is not present, but lives at or in the immediate vicinity of the place of delivery, the carrier must notify him of the arrival of the goods, and then he has a reasonable time to take and remove them. If he is absent, unknown, or cannot be found, then the carrier can place the goods in its freight house, and after keeping them a reasonable time, if the consignee does not call for them, its liability as a common carrier ceases.' "[37]

When the question was first presented to the Supreme Court of Michigan, the court was equally divided and no decision was reached. This case, however, is important for a valuable opinion of Justice Cooley, in which that eminent jurist discussed the question on its merits and reviewed the authorities.[38] This opinion evidently bore fruit, for very soon after, in the case of Buckley v. Gt. West. R. Co., this court declared its adhesion to the New Hampshire view.[39] A good statement of the considerations that have induced the adoption of this rule is to be found in the opinion of Peters, J., in Mobile & G. R. Co. v. Prewitt.[40] Speaking of a consignment of goods in care of the railway company, he said it could not be considered that such a bailment was without hire, though no storage charges had beeen demanded. "The accommodation itself is one that has a strong tendency to bring business to the company. * * * Thus the company is paid for the use of its depots by the increase of its business." Other cases supporting these propositions are to be found in the note.[41] What is a reasonable time for removal of the goods within the meaning of this rule must always be a question to be determined in view of the facts of the case; and, the facts not being in dispute, this question is for the decision of the court.[42] It is such time as will enable one living in the vicinity of the place of delivery to inspect and remove the goods in the ordinary course of business, and in the usual business hours.[43] In one case where three days had passed after notification to the consignee and request to remove the goods, this was held sufficient time to relieve the carrier of his extraordinary liability.[44] In another case the consignee was notified on a Saturday of the arrival of cotton at the carrier's dock, but left part of it there till the following Wednesday, when it was burned. The carrier was liable only in case negligence on his part was shown.[45]

Modification by Usage or Contract.—In any case, however, the whole question of liability may be governed by customary usage or special contract.[46] For example, goods were consigned to the shipper's order, with a direction that a third person should be notified of their arrival at place of destination. It was held that such notice relieved the company of liability as carrier.[47] In a recent Georgia case,[48] it was held that in order

[37] Tenner v. Buffalo & S. L. R. Co., 44 N. Y. 505, 4 Am. Rep. 719.

[38] McMillan v. Mich., S. & N. I. R. Co., 16 Mich. 79.

[39] 18 Mich. 121.

[40] 46 Ala. 63, 7 Am. Rep. 586.

[41] Faulkner v. Hart, 82 N. Y. 413, 37 Am. Rep. 574; Arthur v. St. P. & D. R. Co., 38 Minn. 965; Burlington & M. R. Co. v. Arms, 15 Neb. 69; L. L. & G. R. Co. v. Norris, 16 Kan. 333; Maigvan v. New Orleans, J. & G. N. R Co., 24 La. Ann. 333; Wood v. Crocker, 18 Wis. 345, 86 Am. Dec. 773; Winslow v. Vermont R. Co., 42 Vt. 700, 1 Am. Rep. 365; Blumenthal v. Brainard, 38 Vt. 402, 91 Am. Dec. 350; Berry v. W. Va. & R. R. Co. (W. Va.), 30 S. E. Rep. 143; Backhaus v. C. & N. W. R. Co. (Wis.), 66 N. W. Rep. 400; Mo. Pac. R. Co. v. Wichita, etc. Grove Co. (Kan.), 40 Pac. Rep. 899; Mo. Pac. R. Co. v. Nevill, 60 Ark. 375; Kirk v. C., M. & St. P. R. Co. (Minn.), 60 N. W. Rep. 1084. In the last case the goods were left in the car for 48 hours after they had reached their destination. In the absence of proof of any custom to deliver such goods from the car, the company was held liable as carrier for their destruction.

[42] Laporte v. Wells, Fargo & Co.'s Exp. Co., 48 N. Y. St. 292.

[43] L. L. & G. R. Co. v. Norris, 16 Kan. 333; Kinney v. St. Paul & P. R. Co., 19 Minn. 251; Wood v. Crocker, 18 Wis. 345, 86 Am. Dec. 773.

[44] Anniston & A. R. Co. v. Ledbetter (Ala.)

[45] Wymanskill Knitting Co. v. Murray, 90 Hun, 564.

[46] The contract may be one fairly inferable from the nature of the business. Feige v. Mich. Cent. R. Co., 62 Mich. 1. And see Hedges v. Hudson River R. Co., 49 N. Y. 223.

[47] Collins v. Ala., G. S. R. Co. (Ala.), 16 South. Rep. 140.

[48] Georgia & A. R. Co. v. Pound, 36 S. E. Rep. 312.

to change the general rule of liability in that state by proof of the company's custom of notifying consignees of the arrival of goods, the usage must be shown to be of an established nature, and the notices indicative of an intention on the part of the company to remain liable as carrier till the consignee had had reasonable time to remove the goods. In this case the evidence was held insufficient to show usage varying the rule.[49]

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[49] See further as illustrating this modification: Reiss v. Tex. & P. R. Co., 98 Fed. Rep. 533; Norton v. The Richard Winslow, 67 Fed. Rep. 259; American Sugar Refinery Co. v. Ghee (Ga.), 21 S. E. Rep. 383; Frank Bros. v. Cent. R. Co., 9 Pa. Sup. Ct. Rep. 129; Tex. & P. R. Co. v. Clayton, 84 Fed. Rep. 305.

CONTEMPT—BRIBING WITNESS—POWER OF COURT TO PUNISH.

FISHER v. McDANIEL.

Supreme Court of Wyoming, May 23, 1901.

1. The attempt to bribe witnesses while attending a trial in which they are to testify, which occurs in the hallway of the court house, or adjoining the building on the outside, is punishable as a contempt occurring in the presence of the court.

2. A court has jurisdiction to punish an act in contempt of court, though such act is also an indictable offense.

POTTER, C. J.: Upon the petition of Belle Fisher, claiming to be unlawfully imprisoned in the jail of Carbon county by the sheriff of that county, a writ of *habeas corpus* was allowed by one of the justices of this court, and made returnable before the court. It appears that one Martin W. Foley was being tried in the district court of Carbon county, on the charge of murder, from the 9th day of July, 1900, to the 14th day of that month, inclusive. On the last-named date the county and prosecuting attorney presented an information charging that the petitioner herein on the 12th day of July, 1900, pending the trial of the Foley case, corruptly approached two of the witnesses for the state and attempted to bribe them to testify falsely in said case, and praying that she be ordered to appear and show cause why she should not be punished for contempt of court. And the court found the defendant to be in contempt of court and fined her in the sum of five hundred dollars and costs and confinement in the county jail of Carbon county, at Rawlins, for the term of six months.

The first and principal contention on behalf of the petitioner is that her alleged conduct did not constitute a contempt, and hence that the court was without jurisdiction in the premises, and its judgment void. In her petition plaintiff charges that her offense was not alleged or proven to have been committed in the presence of the court, or so near thereto as to obstruct the procedure of the court; and the argument of her counsel is based upon that assumption. It is contended that an attempt to bribe a witness out of the presence of the court is not a contempt of court, but was punishable at common law as a crime, and was so punishable by statute in this state. It is not claimed that the court is without jurisdiction to punish as a contempt an act also indictable or punishable as an offense against the criminal laws, but it is conceded that the fact that an act is otherwise indictable does not deprive the court of the essential power to punish the same act as a contempt. It is, however, insisted that the offense charged against petitioner is not, and never was, a contempt of court. Counsel admit that the legislature cannot, by making an act indictable, interfere with the inherent authority of a court to punish for contempt; but they argue that neither the legislature nor the court is authorized to declare a crime to be a contempt which has always been punishable as a distinct, indictable offense at common law. It is practically conceded, if not in so many words, that the attempt to bribe a witness in the presence of the court, or so near thereto as to interrupt its orderly procedure, would amount to a contempt of court. In respect, therefore, to the question of jurisdiction, the contention of plaintiff's counsel is confined to the proposition that the acts charged to have been committed did not occur in the presence of the court, or so near thereto as to interfere with its procedure. The information against the petitioner alleged that her conduct complained of occurred at the city of Rawlins, in the county of Carbon. The court was in session in that city. But the affidavits attached to the information, and upon which it was founded, were more specific. The witness Isherwood deposed that he was corruptly approached by the petitioner near the court house, and that she proposed that if he modify his testimony in the Foley case, and swear falsely from the evidence given by him at a former trial, she would pay him $300. According to the affidavit of the witness Stafford, he was approached by petitioner in the court house, and the proposition made to him was that if he would change his testimony she would do the right thing,—"meaning that she would compensate" the witness for so changing his testimony and swearing falsely. On the hearing, Isherwood, being asked to state the circumstances of the attempt of the petitioner to bribe him, testified as to the place where it occurred as follows: "At that time I was supposed to be upstairs as a witness. I went downstairs to go to the water-closet. When I got down past the corner, Miss Fisher called me, and I stopped." He then related the conversation between the petitioner and himself, in which the attempt was made to induce him to change his testimony. Stafford testified that he was approached by the petitioner in the hall of

the court house, downstairs, in the corridors between the two doors, and at that place the proposition was made to him to give false testimony. Both parties were in attendance upon the court as witnesses for the state in the criminal case already mentioned. Miss Fisher denied having made any corrupt propositions to either witness, but in giving her version of the affair she fixed the place of the conversation as "downstairs here," and again, "there in the stairway." She stated that several persons were present, and some talk ensued, which she related, and that Dr. Stafford turned aside in the little hallway, and she had some further conversation with him there. She admitted, however, having met Isherwood at the corner of the court house, or "in" the corner, but denied having attempted to induce him to swear falsely.

In the case of *Ex parte* Savin, 131 U. S. 267, 9 Sup. Ct. Rep. 699, 33 L. Ed. 150, it appeared that the petitioner had been adjudged guilty of contempt for having improperly endeavored to deter a witness from testifying in a case in behalf of the government; the offense of petitioner having been committed once in the jury room temporarily used for witnesses, and once in the hallway of the court building, immediately adjoining the the court room. The question arose whether the misbehavior occurred in the presence of the court. It was held that it did. The court said: "The jury room and hallway where the misbehavior occurred were parts of the place in which the court was required by law to hold its sessions." And after quoting the following from Bacon, in his essay on Judicature: "The place of justice is an hallowed place; and therefore not only the bench, but the footpace and precincts and purprise thereof, ought to be preserved against scandal and corruption,"—the court said further: "We are of opinion that, within the meaning of the statute, the court, at least when in session, is present in every part of the place set apart for its own use, and for the use of its officers, jurors, and witnesses; and misbehavior anywhere in such place is misbehavior in the presence of the court. * * * If, while Flores was in the court room, waiting to be called as a witness, the appellant had attempted to deter him from testifying on behalf of the government, or had there offered him money not to testify against Gougon, it could not be doubted that he would have been guilty of misbehavior in the presence of the court, although the judge might not have been personally cognizant at the time of what occurred. But if such attempt and offer occurred in the hallway just outside of the court room, or in the witness room, where Flores was waiting in obedience to the subpœna served upon him, or pursuant to the order of the court, to be called into the court room as a witness, must it be said that such misbehavior was not in the presence of the court? Certainly not." The Savin case is strongly in point, the facts being very much the same as in the case at bar—certainly as to the attempt upon the witness Stafford. Upon the principle laid down in that case, no doubt can exist but that the offense of petitioner, within legal contemplation, was committed in the presence of the court. The bribing of witnesses or jurors strikes at the very foundation of judicial determination, and the court would be shorn of much of its efficiency in the administration of justice if it possessed not the power to protect itself against such reprehensible conduct as the corrupt interference with witnesses in the very precincts of the court, where the witnesses assemble in obedience to subpœna, and while waiting to be called to give their testimony. Witnesses are not usually required to remain constantly in the court room, and if they are in the hallway, witness room, if any, or about the building, within easy call, the purpose of their attendance is ordinarily observed, until they are required to take the stand. When in the building in obedience to subpœna or order of court they are in attendance upon the court and subject to its order, and we are not inclined to adopt so technical a construction of the law as would permit a person to station himself within the building where the court is held, and there attempt to corruptly influence the testimony of witnesses, without fear of being punished for contempt. The argument of counsel that such conduct would not be in the presence of the court, or so near thereto as to interfere with its procedure or obstruct the administration of justice is, to say the least, unreasonable. It is, moreover, opposed not only by the decision of the United States Supreme Court in the Savin case, but by other eminent authorities. In Sinnott v. State, 11 Lea, 281, it was held that one was guilty of contempt who approached the deputy sheriff, while engaged in summoning jurors, with a list of names of persons whom he endeavored to induce the deputy to summon as jurors, and also approached another deputy and sought to induce him to summon a certain person upon the panel, to the sheriff unknown, although neither of said acts were committed in the court house or in the actual presence of the court. The statute provided that a "willful misbehavior of any person in the presence of the court, or so near thereto as to obstruct the administration of justice," is a contempt, and also that an abuse of or unlawful interference with the process or proceedings of the court is a contempt. The court said: "The attempt of defendant to induce the officers of the court to summon as jurors in the particular case then to be tried certain persons specified by him, in preference to others, or, in common parlance, to 'pack a jury,' was an unlawful interference with the proceedings of the court, within the purview of said provisions, and was a contempt for which he was punishable by the court. Nor was it material that it was not within the court house, or in the immediate presence of the court." In the case of *Ex parte* Brule (D. C.), 71 Fed. Rep. 943, the accused was charged with having, with the use of money, persuaded another to conceal and hide himself and absent himself

from court to avoid the service of a subpœna upon him, and thereby prevented the government from using him as a witness upon a criminal trial. He was adjudged guilty of contempt, and it was held that the act was punishable as a contempt, though it was done at the residence of the witness, at some distance from the court house, in the town where the court was sitting, on the ground that it constituted a misbehavior so near to the court as to obstruct the administration of justice. The learned judge stated in the opinion that, had the particular misbehavior charged occurred anywhere within the building where the court was held, it would have been misbehavior in the presence of the court, and added: "If it is a contempt to bribe a witness in front of the court house door, is it not a contempt to attempt to do the same thing on the street opposite the court building, or four blocks away? Is not the result the same? Is not the motive of the accused the same? What difference does it make whether the attempt was made on the ground owned by the United States, or at the residence of the witness in the same town, four blocks, or about one-quarter of a mile, away from the court building? In one case the misbehavior would be construed to be in the presence of the court, and in the other 'so near thereto as to obstruct the administration of justice,' and the statute, in clear language, is made to apply to both cases." See, also, *Ex parte* Cuddy, 131 U. S. 280, 9 Sup. Ct. Rep. 703, 33 L. Ed. 154; Montgomery v. Judge, 100 Mich. 436, 59 N. W. Rep. 148; Langdon v. Judges, 76 Mich. 358, 43 N. W. Rep. 310; Hale v. State, 55 Ohio St. 210, 45 N. E. Rep. 199, 36 L. R. A. 254; Steube v. State, 3 Ohio C. C. 383. In Hale v. State the party adjudged to be in contempt had, by promising to pay the expenses of a witness who had been subpœnaed, induced her to leave the county, and thereby prevented her appearance as a witness at the trial of a criminal case. The act was held to be a contempt of court, and punishable as such, notwithstanding that it was by statute constituted a distinct criminal offense, and that no express provision of the statute made the statutory punishment cumulative. It is well settled that, if an act is a contempt of court, the fact that the same act is indictable as a criminal offense does not take away the jurisdiction of the court to punish the offender as for a contempt. We understand this general principle to be conceded, while it is contended that a different rule governs this case. We do not think so. The case comes fairly within the general doctrine, and we apprehend that enough has been said to render further discussion unnecessary.

It is insisted that as section 5087 of the Revised Statutes, providing for the punishment as a misdemeanor of one guilty of disobeying a subpœna, expressly states that it shall not prevent summary proceedings for contempt, while section 5088 contains no such reference to contempt proceedings, and is not, therefore, expressly rendered cumulative, the remedy under the last-named section for the acts covered thereby is sole and exclusive, and deprives the court of the power to punish such acts as for a contempt. Under similar statutory provisions the contrary was held in Hale v. State, 55 Ohio St. 210, 45 N. E. Rep. 199, 36 L. R. A. 254, upon facts already alluded to in referring to that case. The statute in question (section 5088) provides that "whoever corruptly or by force, or threats or threatening letters, endeavors to influence, intimidate or impede any juror, witness or officer in the discharge of his duty; or by threats or force obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice in any court of this state, shall be fined not more than one thousand dollars, to which may be added imprisonment in the county jail not more than sixty days nor less than ten days." The act of the petitioner clearly amounting to a contempt, bearing in mind the general rule above adverted to (that making an act indictable as an offense does not invade the power of a court to punish for contempt), we are not disposed to hold that petitioner was liable to be proceeded against only under section 5088. The power to punish for contempts in *facie curiæ* is inherent in all courts of superior jurisdiction. Legislative authority is not required for its existence or exercise. In this state, indeed, there is no statute conferring the power in such a case as the one at bar. We are clearly of the opinion that section 5088 is not exclusive, and that, where the act amounts to a contempt, it may be punished as such.

NOTE—*Contempt of Court.—1. Power to Punish for Contempt Where Other Remedies Exist.* — The power to punish for contempt cannot be abridged by the legislature, at least over courts created by the constitution. This is the general rule. Hawes v. State, 46 Neb. 150; Matter v. Shortridge, 99 Cal. 526, 37 Am. St. Rep. 78; Hale v. State, 55 Ohio St. 210; Cheadle v. State, 110 Ind. 301, 59 Am. Rep. 199; *In re* Chadwick, 109 Mich. 588. It would seem to follow, *a fortiori*, that if the legislature cannot directly abridge the power of a court to punish for contempt, it certainly cannot do so indirectly by making the offense indictable, or making provision for other remedies. It is therefore well settled that the indictability of an offense is no bar to its summary punishment as for contempt. United States v. Debs, 158 U. S. 564, 64 Fed. Rep. 724; *Ex parte* Acock, 84 Cal. 50; Burke v. Territory, 2 Okla. 499; Pledger v. State, 77 Ga. 242; *In re* Hughes (N. Mex. 1895), 43 Pac. Rep. 692; State v. District Court, 52 Minn. 283; Matter of Griffin, 98 N. Car. 225; Cartwright's Case, 114 Mass. 230. And it is a general rule that a contempt, though punishable by criminal prosecution of any character, is also punishable in contempt proceedings. United States v. Debs, 158 U. S. 564; *Ex parte* Savin, 131 U. S. 267; State v. Faulds, 17 Mont. 140, 42 Pac. Rep. 285; *In re* Cartwright, 114 Mass. 230; *Ex parte* Bergman, 3 Wyo. 396, 26 Pac. Rep. 914. Thus, in *Ex parte* Savin, *supra*, it was held that while the same offense, which constitutes the contempt, is embraced in Rev. St. U. S., sec. 5399, and punishable by indictment, that method of procedure is not conclusive, and the court may proceed

summarily as for contempt. Some earlier cases held to a contrary rule, denying the right of the court to punish for contempt where acts were otherwise punishable. State v. Blackwell, 10 S. Car. 35; State v. Blocker, 14 Ala. 450; *In re* Kerrigan, 38 N. J. Law, 344.

2. *Misconduct "in Presence of" Court.*—What constitutes "in the presence of" the court, in order to give court jurisdiction to punish the offense for contempt, is sometimes a difficult question, and is best settled by reference to the authorities. Thus, in *Ex parte* Savin, 131 U. S. 267, 9 Sup. Ct. Rep. 699, it was held that attempts by persuasion and offer of money to deter a witness duly subpœnaed from testifying in behalf of the government, such attempts being made in the witness room, immediately adjacent to, and in the hallway of, the court room, and while the court was in session, constitute misbehavior in the presence of the court. So, also, it has been held that a contempt in the piazza of the court house, into which the windows of the court room open, is a contempt in the presence of the court. United States v. Carter, 3 Cranch (C. C.), 423. But a peculiar case arose recently in Missouri, where a commitment for contempt "for making a murderous assault upon a person named, in the court's presence," was held to be illegal where the evidence showed that the assault occurred in the rotunda, outside of the court room, and that because of a swinging door, and the density of the crowd, and the nearsightedness of the judge, he could not have seen the occurrence, and that his subsequent inquiries showed that he did not, in fact, see it. *Ex parte* O'Brien, 127 Mo. 477, 30 S. W. Rep. 158. In this case, however, there were other vital defects in the record on which the court laid great stress in nullifying the commitment. In the case of Commonwealth v. Stuart, 2 Va. Cas. 320, it was held that the making of an affray and riot, accompanied with great noise and turbulence, at a tavern, near the court house, where the judge of the court was, and of which the rioters were advised, during a night of the term, but the court being then in recess, is not a contempt of court. On the other hand, however, it has been held that misbehavior in the court room, in the presence of the judge, after the adjournment of court from one day to the next, but while the judge is attending to business, is punishable as a contempt. Baker v. State, 82 Ga. 776, 9 S. E. Rep. 743, 14 Am. St. Rep. 192. Judges, however, are not proof against rough handling or insult when not acting in their judicial capacity, and they may not use their prerogatives as judges to avenge themselves for private wrongs or insults. For instance, to demand loudly and arrogantly of a justice merely engaged in writing a letter requiring his official signature, money which had been collected by him, does not authorize a punishment for contempt. Such writing will admit of interruption. Winship v. People, 51 Ill. 296. So, also, an insult to a parish judge, acting as auctioneer, is not a comtempt of him in his judicial capacity, and cannot be so punished. Detournian v. Dormenon, 1 Mart. (La.) 138. See also Fitler v. Probasco, 2 Browne (Pa.), 137, where it was held that a justice cannot punish summarily for a contempt while he is acting ministerially and not judicially.

3. *Tampering with Witnesses and Jurors as Contempt of Court—Bribing.*—Statutes in nearly every state specifically provide that any person, giving or offering any witness, or person about to be called as a witness, anything of value to influence his testimony, or to keep him from testifying, is guilty of bribery. These statutes also provide punishment. We have seen, however, that such statutes, although they may define the offense, do not exclude the jurisdiction of the court to punish them as for contempt. *Ex parte* Savin, 131 U. S. 267, 9 Sup. Ct. Rep. 699. Moreover, the court is not limited by the definition of the offense by any statute but is allowed a large discretion in decreeing what acts are a contempt. Thus, merely an attempt to create a belief that a juror or other officer of the court having active duties to perform upon a trial can be bribed, is a contempt of court. Little v. State, 90 Ind. 338, 46 Am. Rep. 224. But we must look to the decided cases for a clear solution of this question, as of nearly all questions under contempt proceedings, as the decision in such proceedings is controlled not so much by strict rules as upon the nature and facts of each particular case. Preventing the attendance of witnesses or inducing them to keep away from the trial is, of course, contempt of court. Thus, it has been held that bribing a person, who is known to be a material witness, to remain away from court, is a contempt of court, whether such person has been subpœnaed or not, and though punishable by indictment is also punishable as a contempt committed by misbehavior "so near" the court "as to obstruct the administration of justice." *In re* Brule, 71 Fed. Rep. 943. On the other hand, however, it has been held that a *supersedeas*, issued in blank as to the names of the parties to the case, is not a valid process upon which to prosecute a rule for contempt, charging one with attempt to bribe another to warn witnesses to avoid service of such subpœnas. Dobb v. State, 55 Ga. 272. So also it has been held that until a party has been supbœnaed to attend before the grand jury, or a subpœna has been issued for him, it is not a contempt of court for a person to induce him to absent himself in order that he may not be subpœnaed. McConnell v. State, 46 Ind. 298. In Michigan, however, the rule is the same as is in the federal courts. A recent case in that state holds that under How. Ann. St., sec. 7257, providing a punishment for one who unlawfully detains a witness while going to or remaining at the court where the suit is noticed for trial, it is not necessary, in order to constitute the offense described, that the witness should have been subpœnaed. Montgomery v. Palmer, 100 Mich. 436, 59 N. W. Rep. 148. In that case one L inquired of the deputy sheriff whether he had a subpœna for one B, as a witness, and was told that he had not. Early the next morning L gave B money, and B immediately left the state. B's testimony was material. The court held that there was a sufficient basis on which to issue a writ requiring L to show cause why he should not be punished for contempt of court. Merely assisting a person to get away, where it is their own desire and free will, is not contempt; there must be pursuasion or coercion on the part of the defendant. Whitten v. State, 36 Ind. 196. For other cases holding it to be contempt to prevent the attendance of witnesses in court, see McCarthy v. State, 89 Tenn. 543, 15 S. W. Rep. 737: Commonwealth v. Feely, 2 Va. Cas. 1; *In re* Whetstone, 9 Utah, 156, 36 Pac. Rep. 634; Haskett v. State, 51 Ind. 176.

Approaching jurors or witnesses in court for the purpose of influencing their action is, of course, a most flagrant contempt of court: Cuddy, Petitioner, 131 U. S. 280; Little v. State, 90 Ind. 338; Langdon v. Judges of Wayne Circuit Court, 76 Mich. 358, 43 N. W. Rep. 310; Gandy v. State, 13 Neb. 445. In the famous case of United States v. Burr, Fed. Cas. No. 14,692f,

it was held that a offer of a sum money to a witness to remove his objections to going without the jurisdiction of the court to testify was not necessarily an attempt to contaminate the source, and a contempt of court in which it was administered. In Beattie v. People, 33 Ill. App. 651, it was held that an attorney who knowingly procures evidence with the intention of deceiving and obstructing justice is guilty of contempt. So also, in Gibson v. Tilton, 1 Bland (Md.), 352, 17 Am. Dec. 306, it was held that though parties could not be prosecuted for a false oath taken in another state, yet, if they knowingly use testimony supported by such spurious oath, they may be punished as for contempt for practicing an imposition upon the court.

CORRESPONDENCE.

ANARCHY—A NOVEL SUGGESTION FOR ITS SUPPRESSION.

To the Editor of the Central Law Journal:

I have read your editorial appearing on page 241, in regard to the assassination of President McKinley, in which you undertake to point out some remedies, and in this connection I wish to suggest that, while anarchism is, to some extent, respectable in Russia, there is no place for it or any part of it in the United States; and that there is possibly a remedy, and I am inclined to the opinion that congress, under the constitution, has a right to define treason. It is fully demonstrated that the death penalty has no terrors for persons who think that they can become martyrs by giving up their life for a cause, and that the death penalty is not a success as a deterrent of crime. There is a large party of respectable adherents to the last part of the above sentence. There is no punishment so severe as exile. This, I think, is not confined to human beings, but extends to the animal kingdom. Any man can determine the severity of such punishment by examining himself. I would therefore suggest as a remedy for anarchism in this country,—deportation. Not such as Russia inflicts, because it is too severe. We have recently acquired some very habitable islands, and my suggestion is: 1st, that congress define treason by statute, and that the definition include that whoever, in any way, utters or proclaims that there should be no law or no government, shall be guilty of treason; and that 2d, whoever is guilty of treason (in addition to the penalties now prescribed) that the penalty shall be deportation to an island (far at sea) where no laws, rules or regulations shall be inaugurated or maintained. And further that no representative of this country shall be there further than sufficient soldiers to see that the above rule is maintained. This, I think, would result in this class of people being placed in a community such as they advocate, and it is wholly immaterial to all the decent people whether they or any of them survive or not, except that they do not starve to death. The advocate of anarchism so long as he keeps his mouth shut, or his pen from paper, is, in my opinion, absolutely harmless. I think the above scheme would give him an opportunity to demonstrate his form of government, and also at the same time protect all law-abiding people from his influence.

RECTOR C. HITT.

BOOK REVIEWS.

HARRIMAN ON CONTRACTS.

The object and characterization of this work is well summed up in the opening paragraph of the author's preface: "In preparing an American treatise on the Law of Contracts at the beginning of the twentieth century, the author has striven to present that branch of the law in its true relation, both to the history of the past and to the probable developments of the future; for the lawyer must be both historian and prophet. Such a presentation of the law must, above all things, be accurate; but the accuracy must often be rather that of the artist who paints a landscape, than that of the mathematician who states the equation of a curve." In other words, as we would more clumsily express it,—it is a bird's eye view of the law of contract, and as such, is very accurately and very cleverly prepared. We desire also to most highly commend the mechanical execution of this work,—it is certainly the acme of the printers' and binders' arts. Nothing in the way of a law book has so delighted our eye than this very neat little volume, with its clear, beautiful type, its elegant paper, and its rich binding in the best quality of law sheep. Bound in one volume of 410 pages, and published by Little, Brown & Co., Boston, Mass.

HUGHES ON ADMIRALTY.

The general excellencies of the Hornbook Series of legal text books are rapidly becoming generally recognized as the standard authorities for the class room and the student. They possess the most important requisite of a student's text book—a clear synthetical arrangement of the entire subject matter free from all complicating and unnecessary details. To the practitioner, of course, the latter are not only useful, but necessary,—for his use, the treatment must be analytical. But the student of law before he attempts to look at the cases in detail must see them as a whole gathered together by a master hand under the great principles of the particular subject under treatment. This is the object of the Hornbook Series, of which the treatise on Admiralty by Robert M. Hughes, M. A., is a most excellent example. In this particular instance, however, Mr. Hughes' work is of interest to the general practitioner as well, as it is the only modern treatise on this very important subject, and is handled by one thoroughly conversant with both the theoretical and practical features of his subject. The practitioner, therefore, as well as the student, is to be congratulated on this addition to the ranks of legal literature. One volume of 510 pages, bound in sheep. Published by the West Publishing Co., St. Paul, Minn.

HUMORS OF THE LAW.

An editor in Platte county printed an item which stated that "the man who was hugging the hired girl had better stop or his name would be published." In a few days about twenty five citizens paid up their subscriptions and told the editor to "pay no attention to the foolish stories goin' around."—*Freemont Tribune.*

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

ALABAMA, 2, 14, 16, 34, 36, 38, 47, 52, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 78, 83, 84, 85, 86, 97, 98, 99, 104,

1. ABATEMENT AND REVIVAL — Objection — Limitation.—Objection that an action should have been revived in the name of the successor of an officer suing in his offical capacity held to have been made too late.—SOUTHERN RY. CO. v. MILLER, Miss., 30 South. Rep. 68.

2. APPEAL AND ERROR—Admission of Incompetent Evidence.—Admission of incompetent evidence held cured by instruction to disregard it.—TAPSCOTT v. GIBSON, Ala., 29 South. Rep. 23.

3. APPEAL AND ERROR—Bill of Exceptions—Main and Cross-Bill.—Where there is both a main bill and a cross-bill of exceptions, and the latter presents controlling question, it will be disposed of first, and, if judgment thereon is reversed, the writ issued on the former will be dismissed.—RIVES v. RIVES, Ga., 29 S. E. Rep. 79.

4. APPEAL AND ERROR— Bond— Failure to Perfect Appeal.—On dismissal of an appeal for want of jurisdiction, the failure to effectually prosecute the appeal was a breach of the conditions of the appeal bond.—SWOFFORD BROS. DRY-GOODS CO. v. LIVINGSTONE, Colo., 65 Pac. Rep. 413.

5. APPEAL AND ERROR—Bond—Requisites.—On dismissal of an appeal, an appeal bond though not complying with Mills' Ann. Code, § 388, held to form a valid common-law contract.—SWOFFORD BROS. DRY-GOODS CO. LIVINGSTONE, Colo., 65 Pac. Rep. 413.

6. APPEAL AND ERROR—Bond—Requisites.—Bond on appeal from order denying new trial held sufficient, when filed simultaneously with the notice of appeal.—ZIENKE v. NORTHERN PAC. RY. CO., Idaho, 65 Pac. Rep. 431.

7. APPEAL AND ERROR—Concession of Appellant.—The court on appeal is not bound by a concession as to the law made by appellant's attorney.—BRADLEY v. CLARK, Cal., 65 Pac., Rep. 395.

8. APPEAL AND ERROR—Diminution.—Motion to dismiss appeal from judgment on the ground that certain papers are not included in the transcript held properly denied, the remedy being by suggestion of diminution.—ZIENKE v. NORTHERN PAC. RY. CO., Idaho, 65 Pac. Rep. 431.

9. APPEAL AND ERROR—Dismissal.—The mistake of the clerk in incorporating original documents in the transcript cannot be imputed to the appellant, so as to be ground for the dismissal of the appeal.—LEVY v. RICH, La., 30 South. Rep. 377.

10. APPEAL AND ERROR - Disputed Question— Verdict.—The finding of a jury on a disputed question of fact should not be set aside by the appellate court, especially where the trial court has refused to do so.—SMITH v. SMITH, Colo., 65 Pac. Rep. 401.

11. APPEAL AND ERROR — Evidence — Sufficiency.—Question as to sufficiency of evidence to sustain verdict cannot be reviewed on appeal from judgment.—WITHERS v. KEMPER, Mont., 65 Pac. Rep. 422.

12. APPEAL AND ERROR —Exceptions —New Trial.—The action of the district court in charging a garnishee should be presented for review by exceptions, and not by motion for a new trial.—WIGHTMAN v. KRUGER, R. I., 49 Atl. Rep. 395.

13. APPEAL AND ERROR—Instructions—Definitions.—In an action for injury from a defective sidewalk, the verdict should not be set aside because of an omission in one place in the charge of the word "reasonable" in defining the duty of the city, when the charge as a whole was correct.—LEONARD v. CITY OF BUTTE, Mont., 65 Pac. Rep. 425.

14. APPEAL AND ERROR—Parties—Objections in Trial Court.—Refusal to make third party a party defendant in unlawful detainer will not be reviewed, when neither the motion nor the ground thereof appears in the record.—SPANN v. TORBERT, Ala., 30 South. Rep. 389.

15. APPEAL AND ERROR—Stipulations—Matters Reviewable.—Where an action is tried by stipulation before the court the only matters reviewable are the rulings made during the progress of the trial to which exception was taken and preserved by bill of exceptions.—OGDEN CITY v. WEAVER, U. S. C. C. of App., Eighth Circuit, 108 Fed. Rep. 564.

16. ATTACHMENT.— Equities of Grantee of Land.—Where land conveyed has been misdescribed in deed, and thereafter is levied on by creditors of grantor, the lien is subordinate to the equities of the grantee in the deed.—BIELER v. DREHER, Ala., 30 South. Rep. 22.

17. BANKRUPTCY— Exemption— Homestead— Where extent of a bankrupt's homestead is uncertain, the title to all the property may properly be treated as vesting in the trustee, subject to such exemption as may finally be awarded and defined.—IN RE MAYER, U. S. C. C. of App., Seventh Circuit, 108 Fed. Rep 599.

18. BANKRUPTCY—Preference—Payments in Money.—Creditor, receiving payments from insolvent within four months before bankruptcy, but not knowing the payments were preferences, cannot be compelled to to repay the money, but must surrender the preferences before filing any claim against the estate.—PIRIE v. CHICAGO TITLE & TRUST CO., U. S. S. C., 21 Sup. Ct. Rep. 906.

19. BANKRUPTCY—Preference—Payment in Money.—Payments in money are transfers of property, within the meaning of the bankruptcy act of 1898, relative to preferences by insolvents.—PIRIE v. CHICAGO TITLE & TRUST CO., U. S. S. C., 21 Sup. Ct. Rep. 906.

20. BANKRUPTCY— Preference— Mortgage.—A mortgage given by a bankrupt within four months prior to the bankruptcy, and taken by the creditor, with knowledge of his insolvency, is void *in toto* as a preference, where the bankrupt waives his right of exemption and under the laws of the state the mortgagee cannot claim it for him.—IN RE SCHULLER, U. S. D. C., D. (Wis.), 108 Fed. Rep. 591.

21. BANKRUPTCY — Preference — Payment of Wife's Debts.—Where bankrupt within four months of adjudication paid alleged debt to his wife, she cannot be compelled to repay on summary order of referee.—IN RE GREEN, U. S. D. C., E. D. (Pa.), 108 Fed. Rep. 616.

22. BANKRUPTCY—Proving Judgment—Limitation.—A creditor cannot prove a judgment obtained against a bankrupt after the filing of the petition against him as a debt against his estate after the expiration of the year to which such proof is limited by Bankr. Act 1898 § 57, cl. n.—IN RE LEIBOWITZ, U. S. D. C., N. D. (Tex.), 108. Fed. Rep. 617.

23. BANKS AND BANKING—National Banks—Liquidation.—The officers of a national bank have no power to incur a liability on the part of such bank after it has gone into liquidation which will be binding on the shareholders.—MOSS v. WHITZEL, U. S. C. C., W. D. Mo.), 108 Fed. Rep. 579.

24. BANKS AND BANKING—Receiver—Not Liable for Fraud on Stockholder.—Receiver of national bank is not liable for damages sustained by purchaser of stock because of fraud of the officers of the bank in the transaction.—LANGTRY v. WALLACE, U. S. S. C., 21 Sup. Ct. Rep. 878.

25. BANKS AND BANKING—Stockholders—Statutory Liability.—Fraudulent representations by which person is induced to become stockholder of national bank held no defense to action by receiver of bank to enforce statutory liability of the stockholders.—LANTRY v. WALLACE, U. S. S. C., 21 Sup. Ct. Rep. 878.

26. BENEFICIAL ASSOCIATION—By-law Prohibiting Resort to Law Invalid.—A by-law of a beneficial society that every contest with a member shall be submitted to a committee, and that such decision shall be final, is invalid and no defense to an action by a member against the society to enforce a pecuniary obligation.—PEPIN v. SOCIETE ST. JEAN BAPTISTE, R. I., 49 Atl. Rep. 887.

27. BILLS AND NOTES — Negotiability — Attorney's Fee.—A provision in a note for the payment of an attorney's fee in event of default does not render it non-negotiable.—COWING v. CLOUD, Colo., 65 Pac. Rep. 417.

28. BILLS AND NOTES — Negotiability — Option to Pay.—A provision in a note that it may be paid before maturity at the option of the maker does not render it non-negotiable.—COWING v. CLOUD, Colo., 65 Pac. Rep. 417.

29. BILLS AND NOTES—Payment to Payee—Indorsee.—Payments made by the maker of a note to payee held not binding on the indorsee on the ground that the payee was the agent of the indorsee.—COWING v. CLOUD, Colo., 65 Pac. Rep. 417.

30. BILLS AND NOTES—Validity — Evidence. — The maker and indorser of a promisory note are competent witnesses to testify to facts which render such note invalid between the parties thereto.—METROPOLITAN NAT. BANK v. JANSEN, U. S. C. C. of App., Eighth Circuit, 108 Fed. Rep. 572.

31. BROKERS—Stock—Ratification.—Failure of principal to repudate sale made by broker on stock exchange immediately on notice thereof held to operate as a ratification.—CLEWS v. JAMIESON, U. S. S. C., 21 Sup. Ct. Rep. 845.

32. BROKERS—Tender of Stock—Legal Title—Tender of stock by broker who has sold it for his principal held not invalid because the principal did not at the time have any legal title to the stock.—CLEWS v. JAMIESON, U. S. S. C., 21 Sup. Ct. Rep. 845.

33. BROKERS—Undisclosed Principal and Purchaser—Privity.—Privity of contract exists between undisclosed principal of broker who sells stock and one who buys equal amount of stock from another party and is made a substituted purchaser under rules of exchange.—CLEWS v. JAMIESON, U. S. S. C., 21 Sup. Ct., Rep. 845.

34. BUILDING AND LOAN ASSOCIATIONS—Double Relation of Shareholder and Borrower.—Contractual relation of shareholder and borrower, borne by a person to building association, and separate duties resting upon him, held distinct, so that subscription and borrowing did not constitute a single transaction, such as a scheme or device to avoid the usury laws.—PIONEER SAVINGS & LOAN CO. v. NONNEMACHER., Ala., 30 South. Rep. 79.

35. BUILDING CONTRACT—Terms—Non-Compliance.—The repairing of a building by plaintiff held not to constitute a compliance with the terms of an unrecorded written contract for the work, and hence plaintiff was not entitled to recover the reasonable value of his services and material.—LAIDLAW v. MARYE, Cal., 65 Pac. Rep. 391.

36. CANCELLATION OF INSTRUMENTS—Pleading.—A bill seeking cancellation of a conveyance of real estate for fraud is demurrable where the material allegations of fraud are not alleged directly and positively, but are left to be deduced from inference from other averments.—PINKSTON v. BOYKIN, Ala., 30 South. Rep. 898.

37. CARRIERS—Subrogation—Insurance.—Stipulation that, in case of damage through carrier's negligence, it should have benefit of any insurance, held valid.—ROOS v. PHILADELPHIA, W. & B. R. Co., Pa. 49 Atl. Rep. 344.

38. CERTIORARI—Agreement to Extend Time.—Under Code, § 2827, providing that appeal from judgment in *certiorari* must be taken within 30 days, the parties cannot by agreement extend the time.—LUSK v. CAPEHART, Ala., 30 South. Rep. 31.

39. CERTIORARI—Notice.—It is too late to give notice to defendant in *certiorari* after term of superior court to which it was returnable.—BUNN v. HENDERSON, Ga., 39 S. E. Rep. 78.

40. COLLISION—Designated Anchorage.—A steamship held not guilty of negligence in anchoring over night in the Delaware river at Philadelphia outside the designated anchorage grounds.—THE CITY OF DUNDEE, U. S. C. C. of App., Third Circuit, 108 Fed. Rep. 679.

41. COMPROMISE AND SETTLEMENT—Conclusiveness.—Plaintiff's acceptance of a certain sum in satisfaction of timber cut from land held to preclude plaintiff from recovering the statutory penalty of $15 per tree.—DARRILL v. DODDS, Miss., 30 South. Rep. 4.

42. CONSTITUTIONAL LAW—Assessments for Street Improvements.—Rule for making special assessments for street improvements prescribed by Ky. St. §§ 2832, 2839, held constitutional.—ZEHNDER v. BARBER ASPHALT PAV. CO., U. S. C. C., D. (Oreg.), 108 Fed. Rep. 570.

43. CONSTITUTIONAL LAW—Collateral Inheritance Tax.—St. 1897, p. 77, exempting a testator's nieces and nephews, when residents of California, from collateral inheritance tax, held unconstitutional, as in contravention of Const. U. S. art. 4, § 2.—IN RE MAHONY'S ESTATE, Cal., 65 Pac. Rep. 389.

44. CONSTITUTIONAL LAW—Due Process—Assessment for Sewer.—Imposition of cost of maintaining public sewers by special assessment on property owners who have paid for their construction, in case they use them, does not deprive them of property without due process of law.—CARSON v. SEWER COM'RS OF BROCKTON, U. S. S. C., 21 Sup. Ct. Rep. 860.

45. CONSTITUTIONAL LAW—Due Process—Sewer Rental.—Ordinance imposing an annual rental for the use of a public sewer, which use is optional with taxpayer, does not deprive him of property without due process of law.—CARSON v. SEWER COM'RS OF BROCKTON, U. S. S. C., 21 Sup. Ct. Rep. 860.

46. CONSTITUTIONAL LAW—Due Process—Trial of Insane Persons.—A person is not deprived of liberty without due process of law by being adjudged a lunatic in his absence, where he is duly served with process, but is not produced on trial because of condition of his health.—SIMON v. CRAFT, U. S. S. C., 21 Sup. Ct. Rep. 836.

47. CONSTITUTIONAL LAW — Innkeepers — Obtaining Board by Fraud.—Code, § 4755, making it a crime to obtain board from an innkeeper by fraudulent representations, held not unconstitutional as granting a special privilege to innkeepers.—CHAUNCEY v. STATE, Ala., 30 South. Rep. 403.

48. CONSTITUTIONAL LAW—Interstate Commerce.—A state law prohibiting the sale of trout in the state is valid, and is not an interference with interstate commerce, as applied to fish brought for sale from another state, where they were lawfully caught.—IN RE DEININGER, U. S. C. C., D. (Oreg.), 108 Fed. Rep. 623.

49. CONSTITUTIONAL LAW—Mayor—Abolishing Office

During Term.—Act March 7, 1901, relating to government of cities of the second class, held not unconstitutional because abolishing office of mayor during his term.—COMMONWEALTH v. MOIR, Pa., 49 Atl. Rep. 351.

50. CONSTITUTIONAL LAW—Special Legislation—Second Class Cities.—Act March 7, 1901, relating to government of cities of the second class, held not unconstitutional as special legislation because limited solely to cities of that class.—COMMONWEALTH v. MOIR, Pa., 49 Atl. Rep. 351.

51. CONSTITUTIONAL LAW—Statutes—When Operative.—Act March 7, 1901, relating to government of cities of the second class, held not unconstitutional as vesting the governor with discretion of determining when it became opperative.—COMMONWEALTH v. MOIR, Pa., 49 Atl. Rep. 351.

52. CONTINUANCE—Sickness.—Continuance held properly denied, when asked because of sickness of defendant.—SPANN v. TORBERT, Ala., 30 South. Rep. 389.

53. CONTRACTS—Construction.—Where a contract to repair a building was drawn by the contractor, any ambiguity in its terms must be construed most strongly against him.—LAIDLAW v. MARYE, Cal., 65 Pac. Rep. 391.

54. CONTRACTS—Rescission—Election.—Where plantiff alleges two grounds for rescinding contract, he cannot be compelled to elect.—ALLRED v. TATE, Ga., 39 S. E. Rep. 101.

55. CONVERSION—Sale of Limestone—Payable in Royalties.—Sale by testator of limestone in place, to be paid for by royalties as removed, held a conversion into personalty, so that royalties accruing after his death are payable to his executor.—IN RE GARDNER'S ESTATE, Pa., 49 Atl. Rep. 346.

56. CORPORATIONS—Assessment—Illegal Meeting—A resolution of bank directors directing suit for the collection of an assessment on stock held invalid, because passed at an illegal meeting.—BANK OF NATIONAL CITY v. JOHNSTON, Cal., 65 Pac. Rep. 883.

57. CORPORATIONS—Preferred Stock—Reorganization—Preferred stock, issued in pursuance of a railroad reorganization agreement, held not entitled to participate in the surplus net earnings after the distribution of the 4 per cent. dividend to which it was entitled on preferred claims.—SCOTT v. BALTIMORE &]O. R. Co. Md., 49 Atl. Rep. 827.

58. COSTS—Allowance.—On rendering judgment for plaintiffs for an amount admitted to be due, held error to disallow their costs, under Code Civ. Proc. § 1851.—PAPE v. CHAUVIN-FANT FURNITURE CO., Mont., 65 Pac. Rep. 424.

59. COURTS—Territorial Court—New Trial.—New trial may be granted for newly-discovered evidence in an action at law by the United States court in the Indian Territory after final decision of the case in the Supreme Court of the United States under Mansf. Dig. ch. 119, § 5155.—*Ex parte* FULLER, U. S. S. C., 21 Sup. Ct. Rep. 871.

60. CRIMINAL — Evidence—Confessions—Voluntary.—Statements of an officer to a defendant charged with stealing cotton, that if he had stolen the cotton it would be better for him to tell the truth about it, did not render defendant's subsequent confession inadmissible as involuntary.—HUFFMAN v. STATE, Ala., 30 South. Rep. 394.

61. CRIMINAL EVIDENCE—Declarations—Res Gestæ.—Exclamations of persons at some distance from the combatants, at the time of the shooting, that deceased had killed defendant, held inadmissible.—GORDON v. STATE, Ala., 30 South. Rep. 30.

62. CRIMINAL EVIDENCE — Declarations of Third Parties.—Evidence as to what a third party told witness before commission of alleged offense held competent.—CARROLL v. STATE, Ala., 30 South. Rep. 394.

63. CRIMINAL EVIDENCE — Expert — Drunkenness.—On trial for larceny a question asked of witness as to whether defendant was drunk, was not objectionable on the ground that it called for an opinion of a non-expert and did not give facts on which the witness based his opinion.—DOZIER v. STATE, Ala., 30 South. Rep. 396.

64. CRIMINAL EVIDENCE — Previous Difficulties.—What defendant stated to friends about a previous difficulty with deceased, statements made after the killing, held inadmissible.—HARKNESS v. STATE, Ala., 30 South. Rep. 78.

65. CRIMINAL EVIDENCE — Proof of Former Difficulties.—Where, on prosecution for murder, evidence of a former difficulty brought on by deceased is produced, the state can show that defendant was the aggressor.—GORDAN v. STATE, Ala., 30 South. Rep. 30.

66. CRIMINAL EVIDENCE—Reading Law.—General objection to reading of an opinion by counsel in argument of a criminal case, where a portion of it was proper, is properly overruled.—MILLER v. STATE, Ala., 30 South. Rep. 379.

67. CRIMINAL EVIDENCE—Relevancy—Failure to Object.—If defendant fails to object to an irrelevant question, the answer, if responsive thereto, will not be excluded.—MILLER v. STATE, Ala., 30 South. Rep. 379.

68. CRIMINAL EVIDENCE — Res Gestæ.—Conduct of parties who arrested defendant held no part of the *res gestæ*.—CARROLL v. STATE, Ala., 30 South. Rep. 394.

69. CRIMINAL LAW—Conspiracy—Proof.—In order to show defendant a conspirator with the actual slayer, held unnecessary to prove by direct evidence that he encouraged his co-defendant to killing.—CADDELL v. STATE, Ala., 30 South. Rep. 76.

70. CRIMINAL LAW—"Reasonable Doubt."—A charge that "a reasonable doubt is a doubt for which a reason could be given," held misleading.—CARROLL v. STATE, Ala., 30 South. Rep. 394.

71. CRIMINAL TRIAL—Instructions.—In a criminal case it was not error for the court to refuse a request which is a substantial duplicate of another instruction given at defendant's instance.—ZIMMERMAN v. STATE, Ala., 30 South. Rep. 18.

72. CRIMINAL TRIAL — Misjoinder — Objection.—Rule of practice that, if severance on trial of two persons indicted for capital offense is not asked for by the date set for trial, the right is waived, held not in violation of the statute.—MILLER v. STATE, Ala., 30 South. Rep. 379.

73. CRIMINAL TRIAL—Nolle Prosequi — Misjoinder.—After demurrer to indictment for misjoinder counts, the state can enter a *nolle* as to one of them.—GIBBS v. STATE, Ala., 30 South. Rep. 393.

74. CRIMINAL TRIAL—Trial Without Jury.—Where criminal case was tried without a jury, conclusion of fact reached, held not reviewable on appeal.—FEIBELMAN v. STATE, Ala., 30 South. Rep. 384.

75. CUSTOMS — Duties — Decrease in Quality — Appraisal.—Sugar imported from Brazil, which has improved in quality by decrease of moisture, may be appraised for duty according to the grade received, instead of the grade as shipped.—AMERICAN SUGAR-REFINING CO. v. UNITED STATES, U. S. S. C., 21 Sup. Ct. Rep. 830.

76. DAMAGES — Failure to Take Stock—Sale on Exchange.—A sale of stock on an exchange to the highest bidder, held a fair basis on which to determine damages by purchaser refusing to take stock sold.—CLEWS v. JAMIESON, U. S. S. C., 21 Sup. Ct. Rep. 845.

77. DEATH BY WRONGFUL ACT—Evidence.—In an action by a widow to recover for the death of her husband, held error to compel her to testify that since his death she had given birth to an illegitimate child.—KOLB v. UNION R. CO., R. I., 49 Atl. Rep. 392.

78. DEPOSITIONS—Deposition Used in Another Suit.—On trial for unlawful detainer, deposition of defendant in chancery suit for the same lands where defend-

ant admits possession, held admissible.—SPANN v. TORBERT, Ala., 30 South. Rep. 389.

79. DIVORCE—Grounds Arising After Filing Bill.—Where a bill was filed for divorce *a mensa et thoro* on grounds not constituting cause for divorce *a vinculo*, held, that a supplemental bill asking for a divorce *a vinculo* for causes which occurred after filing the original bill could not be allowed.—SCHWAB v. SCHWAB, Md., 49 Atl. Rep. 331.

80. EJECTMENT—Parol Guaranty as a Defense.—Purchasers of land cannot, in ejectment for failure to pay the price, show parol guaranty that electric railroad should be located near the land.—BAKER v. FLICK, Pa., 49 Atl. Rep. 349.

81. ELECTIONS.—A complaint charging defendant with a promise of patronage to a person named, "with intent to promote his own [defendant's] election," charges an offense within subdivision 3, § 19, Purity of Elections Act.—BRADLEY v. CLARKE, Cal., 65 Pac. Rep. 898.

82. ELECTIONS—Expenses — Constitutional Law.—So much of Purity of Elections Act as requires a successful candidate to swear to his expenses, etc., as a qualification to taking office, held void as a violation of Const. art. 20, § 3.—BRADLEY v. CLARKE, Cal., 65 Pac. Rep. 895.

83. ESTOPPEL—Inducing Purchaser of Note.—Where maker of note induces another to purchase it, he is estopped from setting up the fact that it is without consideration.—TAPSCOTT v. GIBSON, Ala., 30 South. Rep. 23.

84. EQUITY — Reformation — Other Relief.—Where court reforms deed, it can retain bill, enjoin attachment proceedings, and annul writ and levy as a cloud on plaintiff's title.—BIELER v. DREHR, Ala., 30 South. Rep. 22.

85. EVIDENCE — Clerk of Court—Identity of Cause.—Clerk of court in which attachment suit was brought can testify to the identity of a cause decided in the supreme court with such attachment suit.—FIRST NAT. BANK v. LIPPMAN, Ala., 30 South. Rep. 19.

86. EVIDENCE — Expert—Sanity.—A non-expert may give his opinion as to sanity of person inquired about, without specification of facts on which such opinion is based.—CADDELL v. STATE, Ala., 30 South. Rep. 76.

87. EVIDENCE—Written Instrument—Parol Variation.—In an action to compel re-assignment of a lease assigned under a contract, held, that there was no ambiguity, rendering evidence of attendant circumstances and the acts and declarations of the parties inadmissible.—HARDWICK v. MCCLURG, Colo., 65 Pac. Rep. 405.

88. EVIDENCE—Written Instrument—Parol Variation.—Where ambiguity as to plaintiff's interest in an estate on which he sought to foreclose a vendor's lien, was latent, parol evidence held admissible to show interest.—MILES v. MILES, Miss., 30 South. Rep. 2.

89. EXECUTORS AND ADMINISTRATORS — Extension of Note.—Extension by executors of a note due testator held at their risk.—IN RE GARDNER'S ESTATE, Pa., 49 Atl. Rep. 346.

90. EXECUTORS AND ADMINISTRATORS — Payment to Minor Without Guardian.—Where a sum bequeathed to a minor is too small to pay the expense of having a guardian appointed, such sum may be paid to his guardian *ad litem* in the action.—COOK v. FIRST UNIVERSALIST CHURCH, R. I., 49 Atl. Rep. 389.

91. EXECUTORS AND ADMINISTRATORS — Retention of Taxes.—Decree of the trial court directing the administrator to retain the amount of the taxes in his possession on final distribution, held not erroneous.—IN RE MAHONEY'S ESTATE, Cal., 65 Pac. Rep. 889.

92. FACTORS—Second Factor — Transferring Securities.—Where factor having negotiable notes of customer transfers the notes with the maker's consent to a second factor as security for advances made, he subordinates his rights thereunder to such second factor.—WALMSLEY v. REISWEBER, La., 30 South. Rep. 5.

93. FEDERAL COURTS—Appeal—Interlocutory Order.—Under Act March 3, 1891, § 7, relating to circuit courts of appeals, as amended by Act June 6, 1900, an appeal to such court does not lie from an interlocutory order denying a preliminary injunction.—AMERICAN SCHOOL FURNITURE CO. v. VAUGHT, U. S. C. C. of App., Seventh Circuit, 108 Fed. Rep. 571.

94. FEDERAL COURTS — Interpretation of Federal Statutes.—Federal statutes must be interpreted by the federal courts independently of local considerations and decisions of other courts.—CALHOUN GOLD-MIN. CO. v. AJAX GOLD MIN. CO., U. S. S. C., 21 Sup. Ct. Rep. 885.

95. FEDERAL COURTS — Jurisdiction—Full Faith and Credit Clause.—Refusal of state court to give full faith to judicial records of another state presents a federal question, sustaining a writ of error from the Supreme Court of the United States.—JACOBS v. MARKS, U. S. S. C., 21 Sup. Ct. Rep. 865.

96. FIRE INSURANCE—Right of Action — Limitations.—Where a fire policy provided that all actions on the policy should be commenced within six months, right to sue for fire occurring November 30th held to expire on May 30th following.—DALY v. CONCORDIA FIRE INS. CO., Colo., 65 Pac. Rep. 416.

97. FIXTURES—Inseverable — Realty.—Store fixtures affixed by the owner of the building at the time of its erection by fastenings let into the wall, held part of the realty, and to pass by the mortgage of the freehold.—JOHNSTON v. PHILADELPHIA MORT. & TRUST CO., Ala., 30 South. Rep. 15.

98. FIXTURES—Not Severed—Conveyance by Deed.—In order to convey legal title to the fixtures not actually severed from the realty, the contract must be in writing and executed with the same formality as a deed.—JOHNSTON v. PHILADELPHIA MORTG. & TRUST CO., Ala., 30 South. Rep. 156.

99. FRAUDULENT CONVEYANCES — Surety and Co-Surety.—A surety held an existing creditor of a co-surety, and entitled to protection against fraudulent conveyance by such co-surety.—WASHINGTON v. NORWOOD, Ala., 30 South. Rep. 405.

100. GAMING — Gambling in Stock and Bonds.—Presumption of intent to make a gambling contract held not to arise from the fact that the seller of stock did not own it at the time.—CLEWS v. JAMIESON, U. S. S. C., 21 Sup. Ct. Rep. 845.

101. GARNISHMENT— Oral Testimony.— A garnishee cannot be charged on oral testimony.—WIGHTMAN v. KRUGER, R. I., 49 Atl. Rep. 395.

102. GUARANTY—Guarantor's Death.—A guaranty for future advances ceases on the guarantor's death and notice thereof to the guarantee.—VALENTINE v. DONOHOE-KELLEY BANKING CO., Cal., 65 Pac. Rep. 881.

103. HIGHWAYS — Driving — Wrong Side. — Where plaintiff, driving to the left of the center of a paved street, collided with defendant's vehicle coming in the opposite direction, held, that she was negligent in driving on the wrong side of the road.—WINTER v. HARRIS, R. I., 49 Atl. Rep. 398.

104. HOMICIDE— Aider or Abettor— Evidence. — On indictment for murder, evidence held to show defendant guilty as an aider or abettor, though he did not fire the fatal shot.—THOMAS v. STATE, Ala., 30 South. Rep. 391.

105. HOMICIDE— Evidence — Course of Bullet. — On trial for homicide of police officer, evidence as to course of bullet which struck and killed another officer at the time held admissible.—MILLER v. STATE, Ala., 30 South. Rep. 379.

106. HOMICIDE—Evidence—Identification.—Any testimony as to what occurred on the night of a homicide, tending to identify the defendants as having been at the place of the killing on that night, held admissible.—MILLER v. STATE, Ala., 30 South. Rep. 379.

107. HOMICIDE—Evidence—Number of Shells.—Where several shots were fired at the time of the killing of a policeman, evidence of the number of shells in the pistol carried by the police officer held admissible.—MILLER v. STATE, Ala., 30 South. Rep. 879.

108. HOMICIDE—Evidence—Relation of Defendant to Paramour.—Evidence as to relations existing between defendant and his paramour, a co-defendant, held admissible as disclosing motive for the murder.—CADDELL v. STATE, Ala., 30 South. Rep. 76.

109. HOMICIDE — Evidence— Threats.— On trial for murder, where evidence is conflicting as to whether the killing was in self defense, previous threats may be shown in evidence.—HARKNESS v. STATE, Ala., 30 South. Rep. 73.

110. HOMICIDE—Evidence—Warrant of Arrest.—In a prosecution for assault in an attempt to arrest, evidence of a person accompanying the constable that the latter had a warrant for defendant held competent.—ZIMMERMAN v. STATE, Ala., 30 South. Rep. 18.

111. HOMICIDE — Officers of the Law—Citizens.—In a prosecution for resisting arrest, instructions that persons accompanying officer to assist in the arrest were not officers of the law are erroneous.—ZIMMERMAN v. STATE, Ala., 30 South. Rep. 18.

112. HOMICIDE—Self-Defense—Bringing on Difficulty.—Charges invoking doctrine of self-defense, but making no reference to the bringing on of the difficulty, held properly refused.—FORD v. STATE, Ala., 30 South. Rep. 27.

113. HOMICIDE—Self-Defense—Retreat —A charge as to self-defense, not including the element of retreat, held properly refused.—FORD v. STATE, Ala., 30 South. Rep. 27.

114. HUSBAND AND WIFE — Abandonment—Wife's Conveyance.—Where husband abandons wife she can convey her separate property without her husband's joining in conveyance.—BIELER v. DREHER, Ala., 30 South. Rep. 22.

115. INDICTMENT AND INFORMATION — Variance—Wrong Name.—Where indictment avers name of deceased to be "Ad Smith, alias Age Smith," and the evidence shows that his name was "Adger Smith," but he was commonly called "Age Smith," there is no variance.—FORD v. STATE, Ala., 30 South. Rep. 27.

116. INNKEEPERS—Fraud—Criminal Action.—Reliance on fraudulent representations by an innkeeper, inducing him to furnish board to another, held a necessary element of the offense defined by Code, § 4755.—CHAUNCEY v. STATE, Ala., 30 South. Rep. 403.

117. INNKEEPERS — Imprisonment for Debt—Constitutional Law.—Code, § 4755, making it a crime to obtain board or lodging from an innkeeper by fraudulent representations, held not unconstitutional as authorizing imprisonment for debt.—CHAUNCEY v. STATE, Ala., 30 South. Rep. 403.

118. INTEREST — Payment of Principal.—Under Civ. Code, § 3290, held, that the payment of the principal of a note which was surrendered to the guarantor's executor relieved his estate from a further claim for interest.—VALENTINE v. DONOHOE-KELLY BANKING CO., Cal., 65 Pac. Rep. 381.

119. INTERNAL REVENUE — Illegal Assessment.—One from whom internal revenue taxes have been illegally exacted under threat of distraint on their recovery is entitled to interest from the date of payment.—McCLAIN v. PENNSYLVANIA CO., U. S. C. C. of App., Third Circuit, 108 Fed. Rep. 618.

120. INTERNAL REVENUE—Legacy and Inheritance Tax.—The provisions of the war revenue act of 1898 imposing taxes on legacies and inheritances operates only upon the estates of persons dying after the date of its passage.—McLAIN v. PENNSYLVANIA CO., U. S. C. C. of App., Third Circuit, 108 Fed. Rep. 618.

121. INTOXICATING LIQUORS — Malt Liquors—Non-Intoxicant.—The legislature can prohibit sale of malt liquor, whether intoxicating or not, in connection with other liquors.—FEIBELMAN v. STATE, Ala., 30 South. Rep. 384.

122. JUDGMENT—Default — Disclaiming Defendant.—In ejectment it was error to refuse a disclaiming defendant right to participate after default; it subsequently appearing that other lands in which he was interested were involved.—BALFOUR-GUTHRIE INV. CO. v. SAWDAY, Cal., 65 Pac. Rep. 400.

123. JUDGMENT — Dismissal — Effect.—A decree dismissing a libel *in rem* against a vessel for repairs, held not an adjudication of the non-liability of the owners for such repairs.—MORRIS v. BARTLETT, U. S. C. C. of App., Third Circuit, 108 Fed. Rep. 675.

124. JUDICIAL SALES—Bill to Correct Description.—Bill to correct description of lands sold under decree in probate can be maintained only where parties in interest had legal notice when decree was rendered and the lands sold for their full value, which has been fully paid.—VAUGHAN v. HUDSON, Ala., 30 South. Rep. 75.

125. JURY — Quashing Venire — Juryman Not Summoned.—That one of the persons drawn to serve on special venire in capital case was not summoned, held no ground for quashing the venire.—CADDELL v. STATE, Ala., 30 South. Rep. 76.

126. JUSTICES OF THE PEACE — Jurisdiction.—Ann. Code, § 653, giving jurisdiction over foreign executors by publication of summons, held not to affect a case where summons was personally had.—WILLIAMS v. STEWART, Miss., 30 South. Rep. 1.

127. LARCENY — Concealment and Conversion.—Where a person takes tortious possession of property, and thereafter conceals it and feloniously converts it to his own use or to the use of another, he is guilty of larceny.—DOZIER v. STATE, Ala., 30 South. Rep. 396.

128. LARCENY — Evidence — Value of Property.—In a prosecution for larceny, it was competent for the state to show what the value of the property alleged to have been stolen was at the time of the taking.—DOZIER v. STATE, Ala., 30 South. Rep. 396.

129. LOST INSTRUMENTS — Defective Affidavit.—In an action on a lost note, that affidavit of loss required by Code is defective, constitutes no ground of objection to the complaint.—TAPSCOTT v. GIBSON, Ala., 30 South. Rep. 23.

130. MALICIOUS PROSECUTION—Damages—Mental Distress.—Deprivation of liberty, oppression, mental trouble, and loss of business standing are results naturally flowing from malicious prosecution, and need not be pleaded.—TEN CATE v. FANSLER, Okla., 65 Pac. Rep. 375.

131. MALICIOUS PROSECUTION—Payment of Money to Secure Liberty.—Payment of money to secure liberty of one imprisoned in malicious prosecution must be specially pleaded, in order to be recovered.—TEN CATE v. FANSLER, Okla., 65 Pac. Rep. 375.

132. MALICIOUS PROSECUTION — Wrongful Attachment.—To maintain action for wrongful attachment, it is not necessary that the attachment suit should have been terminated.—ALSOP v. LIDDEN, Ala., 30 South. Rep. 401.

133. MANDAMUS — Officer — State Treasurer.—A state treasurer will not be compelled by *mandamus* to do an act in violation of constitution, though the attorney general has advised him that it would not be a violation of such constitution.—PARK v. CANDLER, Ga., 39 S. E. Rep. 89.

134. MANDAMUS—Tribunals—Ultra Vires Acts.—*Mandamus* will not lie to command an inferior tribunal to do that which it could not have done without such mandate.—EX PARTE CAMPBELL, Ala., 30 South. Rep. 385.

135. MASTER AND SERVANT—Master's Duty — Inspection.—Master's duty to inspect apparatus about which servant is employed cannot be delegated.—NEWTON v. VULCAN IRON WORKS, Pa., 49 Atl. Rep. 339.

136. MASTER AND SERVANT—Master's Liability—Test.—Test of employer's liability for defective machinery is whether it was reasonably safe for the purpose for which it was used.—KENNEDY V. ALDEN COAL CO., Pa., 49 Atl. Rep. 843.

137. MECHANICS' LIENS — Owner's Liability — Ultra Vires Contracts.—It is no objection to the claim of a material-man to a mechanic's lien that the contractor had no power under its charter to make the contract.—GENERAL FIRE-EXTINGUISHER CO. V. MAGEE CARPET WORKS, Pa., 49 Atl. Rep. 866.

138. MECHANICS' LIENS — Payment by Owner—Right of Material-Men.—That owner voluntarily paid a bill in excess of the contract price of the building, did not prejudice a material-man furnishing materials to the contractor.—SOUTHERN CALIFORNIA LUMBER CO. V. JONES, Cal., 65 Pac. Rep. 378.

139. MECHANICS' LIENS — Pleading General Issue.—Defendant in mechanic's lien, having pleaded general issue, waives defect in claim.—GENERAL FIRE-EXTINGUISHER CO. V. MAGEE CARPET WORKS, Pa., 49 Atl. Rep. 866.

140. MINES AND MINERALS—Blood Veins—Surface Location.—Blind veins underneath prior lode claims belong to the surface location under Rev. St. U. S. § 2322.—CALHOUN GOLD-MIN. CO. V. AJAX GOLD MIN. CO., U. S. S. C., 21 Sup. Ct. Rep. 885.

141. MINES AND MINERALS—Exploration—Mechanic's Lien.—A mining expert who contracted to explore certain mines held not entitled to assert a mechanic's lien on the property for such services under Mechanic's Lien Act.—LINDEMANN V. BELDEN CONSOL. MIN. & MILL. CO., Colo., 65 Pac. Rep. 408.

142. MINES AND MINERALS — Patents — Collateral Attack.—Patents of lode-mining claims cannot be collaterally attacked by evidence that on a subsequent location of a tunnel site no ore had been discovered in the lode claims.—CALHOUN GOLD-MIN. CO. V. AJAX GOLD-MIN. CO., U. S. S. C., 21 Sup. Ct. Rep. 835.

143. MORTGAGES — Bona Fide Indorsee — Equities.—Where a negotiable note secured by a trust deed is transferred before maturity to a *bona fide* indorsee, his rights under the trust deed are not subject to defenses existing between the maker and payee.—COWING V. CLOUD, Colo., 65 Pac. Rep. 417.

144. MORTGAGES — Parties — Second Mortgagee.—In an action to foreclose a prior mortgage, it was not necessary to make a second mortgagee of church property, whose mortgage was made by the president and secretary of the trustees individually, a party.—SHACKLETON V. ALLEN CHAPEL AFRICAN M. E. CHURCH, Mont., 65 Pac. Rep. 428.

145. MORTGAGES — Priming — Right of Record Mortgages.—Rights of mortgage creditors second in rank held recognized as priming the mortgage first in rank to the extent that it was without consideration when the mortgage creditors second in rank acquired their rights.—WAMSLEY V. RESWEBER, La., 30 South. Rep. 5.

146. MUNICIPAL CORPORATIONS—Bonds—Irregularity.—Bonds for payment of street improvements issued under Act May 23, 1889, held valid, though assessment was invalid because of the irregularity in passage of city ordinance.—GABLE V. CITY OF ALTOONA, Pa., 49 Atl. Rep. 867.

147. MUNICIPAL CORPORATIONS—Contract—Ordinance or Resolution.—Where statutes governing cities do not require a contract to be entered into by ordinance, a city cannot avoid a contract, which it recognized as valid on the ground that its execution was authorized only by a resolution.—OGDEN CITY V. WEAVER, U. S. C. C. of App., Eighth Circuit, 108 Fed. Rep. 564.

148. MUNICIPAL CORPORATIONS — Negligence—Steam Roller.—No other notice to travelers of a steam roller on the street is necessary than a view of the roller itself.—DISTRICT OF COLUMBIA V. MOULTON, U. S. S. C., 21 Sup. Ct. Rep. 846.

149. NEGLIGENCE—Children—Excavation.—One making excavation held not bound to so guard it as to prevent injury to children who come upon it without his invitation.—SAVANNAH, ETC. RY. CO. V. BEAVERS, Ga., 39 S. E. Rep. 82.

150. NEGLIGENCE—Children—Open Cellar.—Premises located 30 feet from a city street, containing an unguarded open cellar, held not particularly attractive to children, so as to render the owner liable for injuries.—LOFTUS V. DEHAIL, Cal., 65 Pac. Rep. 379.

151. NEGLIGENCE—Proximate Cause.—Violence of a playmate held the proximate cause of plaintiff's injuries, so that the owner of property on which the injury occurred was not liable.—LOFTUS V. DEHAIL, Cal., 65 Pac. Rep. 379.

152. NEW TRIAL—Amount too Trivial.—Amount involved in an action against a garnishee held too trivial to justify the granting of a petition for a new trial, though error appeared.—WIGHTMAN V. KRUGER, 49 Atl. Rep. 895.

153. NEW TRIAL—Modification of Judgment.—Where plaintiff failed to comply with order requiring him to consent to a modification of the judgment held to entitle defendant to a new trial.—BONELLI V. JONES, R. I., Nev., 65 Pac. Rep. 374.

154. PARTIES—Waiver.—An objection that plaintiff's co-tenant should have been joined in an action held waived, where it was not made in writing before the commencement of trial.—DARILL V. DODDS, Miss., 30 South. Rep. 4.

155. PARTNERSHIP—Dissolution—Service of Process.—Service of process on a commerical partnership during its continuance may be made by service on one of the members, which will be service on all; but, after dissolution, service must be made on each member intended to be sued.—LEVY V. RICH, La., 30 South. Rep. 377.

156. PLEADING — Amended and Substituted Pleadings.—An amended petition may be filed, instead of attempting to file a substitute for the original petition, which, with all the records, have been lost.—DISTRICT OF COLUMBIA V. TALTY, U. S. S. C., 21 Sup. Ct. Rep. 896.

157. PLEADING—Amendment.—The statutes of Missouri do not authorized a plaintiff to amend his petition in vacation before the term to which the summons is returnable.—PETERSON V CHICAGO, M. & St. P. RY. CO., U. S. C. C., W. D. Mo., 108 Fed. Rep. 561.

158. PLEADING — Amendment — After Trial Commenced.—The court, after trial has been entered upon, can allow amendment to complaint to correspond with the evidence.—TAPSCOTT V. GIBSON, Ala., 30 South. Rep. 23.

159. PLEADING—Puis Darrein Continuance.—Matter arising after suit brought, but before issue joined, is not proper matter for a *puis darrein* continuance.—LINDSAY V. BARNETT, Ala., 30 South. Rep. 395.

160. PLEDGES—Banks—Assignment of Mortgage.—An assignment of a mortgage to a bank by a stockholder of a corporation to secure a corporate debt was a pledge, and he occupied the position of surety.—VALENTINE V. DONOHOE-KELLY BANKING CO., Cal., 65 Pac. Rep. 381.

161. PRINCIPAL AND SURETY—Fraudulent Conveyance of Co-Surety.—Surety on administrator's bond held entitled, at any time within 10 years after final settlement of the adminstration, to maintain bill to set aside conveyance of co-surety as fraudulent against him.—WASHINGTON V. NORWOOD, Ala., 30 South. Rep. 405.

162. PRINCIPAL AND SURETY—Right of Contribution.—Right of contribution accrues only when surety pays more than his share of the common liability.—WASHINGTON V. NORWOOD, Ala., 30 South. Rep. 405.

163. PROHIBITION—Final Hearing—Interlocutory Order.—Where, on application for a writ of prohibition, a rule *nisi* is granted, it is no objection that the judg-

ment prohibited respondents from doing the acts complained of until final hearing.—EX PARTE CAMPBELL, Ala., 30 South. Rep. 385.

164. QUIETING TITLE — Contract of Share. — The grantees of a mining claim, in consideration of a contract to work the mine and give part of the minerals to the grantor, cannot have their titles quieted as against the grantor and his assigns.—DOWING V. RADEMACHER, Cal., 65 Pac. Rep. 385.

165. QUIETING TITLE—Description—Judgment.—In an action to quiet title, a judgment in favor of plaintiff, relating to land other than that described in the complaint, was erroneous, as not within the issues.—BALFOUR-GUTHRIE INV. CO. V. SAWDAY, Cal., 65 Pac. Rep. 375.

166. REFORMATION OF INSTRUMENTS — Possession of Plaintiff Under Deed.—In order to maintain bill to correct description of lands in a deed, it is not necessary that complainant should be in possession.—BEILER V. DREHER, Ala., 30 South. Rep. 22.

167. REMOVAL OF CAUSES—Amending Petition.—The unauthorized filing of an amended petition in vacation, reducing the amount of the damage prayed for below, $2,000, held not to affect defendant's right of removal.—PETERSON V. CHICAGO, ETC. RY. CO., U. S. C. C., W. D. (Mo.), 108 Fed. Rep. 561.

168. SHERIFFS AND CONSTABLES — Negligence — Indemnity.—Constables selling goods under distress for rent, held not entitled to recover on indemnity bond; his liability for damages being caused by his own neglect.—BLAIR V. BORING, Pa., 49 Atl. Rep. 865.

169. SHIPPING — State Pilot — Owner's Liability.—A ship owner is not liable for injuries caused by negligence of pilot accepted by vessel under Laws N. Y. 1882.—HOMER RAMSDELL TRANSP. CO. V. LA COMPAGNIE GENERALE TRANSATIANTIQUE, U. S. S. C., 21 Sup. Ct. Rep. 831.

170. STATUTES — Construction.—Where an act must be construed either as unconstitutional or as repealing a former act by implication, the latter construction will be adopted.—PARK V. CANDLER, Ga., 39 S. E. Rep. 89.

171. STATUTES — Construction by Federal Court of State Statutes.—Construction by a state court of a state statute held binding on the Supreme Court of the United States.—COMMERCIAL NAT. BANK V. CHAMBERS, U. S. S. C., 21 Sup. Ct. Rep. 866.

172. STATUTES — Repeal — Effect.—Where an act attempts to repeal prior legislation not *germane* to the general subject, it will not vitiate the entire act.—COMMONWEALTH V. MOIR, Pa., 49 Atl. Rep. 351.

173. STATUTES—Title.—Act March 7, 1901, relating to cities of the second class, held not unconstitutional as not expressing the subject in the title.—COMMONWEALTH V. MOIR, Pa., 49 Atl. Rep. 351.

174. STATUTES — Title—Undisclosed Subjects.—Act of 1898 to equalize taxation for state and county purposes, held unconstitutional, as embracing subjects not disclosed in its title.—EQUITABLE GUAR. & TRUST CO. V. DONAHOE, Del., 49 Atl. Rep. 372.

175. STIPULATIONS — Evidence — Unauthenticated Copies.—Agreements between counsel, permitting unauthenticated copies of documents to be offered in evidence liberally construed.—LEVY V. RICH, La., 30 South. Rep. 377.

176. TAXATION—Assessment—Capital Stock.—Refusal to deduct the value of real estate owned in other states by national bank from the value of its shares of stock, held not to unlawfully discriminate against such bank under United States constitution.—COMMERCIAL NAT. BANK V. CHAMBERS, U. S. S. C., 21 Sup. Ct. Rep. 868.

177. TAXATION — Assessment—Computation.—Where the roadbed and rolling stock of a railroad was worth $11,000 per mile, and assessable value of the rolling stock was $1,000 per mile, it was error to reduce the $11,000 by 50 per cent. and then subtract $1,000, to find the assessable value of the roadbed per mile.—OREGON & C. R. CO. V. JACKSON CO., Oreg., 65 Pac. Rep. 369.

178. TAXATION—Assessment—Judgment on Appeal.—Where circuit court, on appeal, affirmed judgment of commissioners' court raising an assessment for taxation, it was error to render further judgment for the taxes due on the assessment as raised.—EX PARTE HOWARD-HARRISON IRON CO., Ala., 30 South. Rep. 400.

179. TAXATION—Capital Stock — Computation.—Gen. St. § 3836, authorizing deduction of real estate forming part of the capital stock in computing the taxable value of corporate stock, does not authorize the deduction of real estate held to respond to particular liabilities.—APPEAL OF CUTLER, Conn , 49 Atl. Rep. 338.

180. TAXATION—National Banks—Assessment.—Rev. St. U. S. § 5219, forbidding taxation of shareholders in national banks at a greater degree than other moneyed capital, does not include capital which does not come in competition with the business of national banks.—COMMERCIAL NAT. BANK V. CHAMBERS, U. S. C. C., 21 Sup. Ct. Rep. 863.

181. TAXATION — Redemption — Enhanced Value.—Where a purchaser of swamp lands made improvements after suit to redeem, he must account from that date for the full rental value of the property as enhanced by the subsequent improvements.—BAIRD V. MCNAMARA, Miss., 30 South. Rep. 69.

182. TRESPASS—Proof—Reasonable Doubt.—In a civil action for trespass by defendant's hogs, plaintiff held not required to prove his case beyond a reasonable doubt.—SMITH V. SMITH, Colo., 65 Pac. Rep. 401.

183. TRESPASS — Proof of Title. — Evidence of title from the state to plaintiff, without showing title in the state and that plaintiff had paid the taxes held not sufficient to support an action to recover the statutory penalty for cutting trees from the property.—DARILL V. DODDS, Miss., 30 South. Rep. 4.

184. TRUSTS AND TRUSTEES — Resulting Trusts.—Where agent for the sale of a patent purchased lands with his own funds, and verbally agreed to sell land to his principal whenever the latter could realize the money, held, no resulting trust in favor of the principal.—NAGENGAST V. ALZ, Md., 49 Atl., Rep. 333.

185. USURY — Conflict of Laws.— Where contract is made in one state, to be performed in another, the parties may stipulate for highest legal interest allowed in either state.—PIONEER SAVING & LOAN CO. V. NONNEMACHER, Ala., 30 South. Rep. 79.

186. WILLS—"Heirs of Money"—Definition.—The term "heirs of money," in a will, construed to mean those to whom bequests of money were made, as distinguished from those to whom specific articles of property were bequeathed or bequests of sums for specific purposes, and not "next of kin."—COOK V. FIRST UNIVERSALIST CHURCH, R. I., 49 Atl. Rep. 389.

187. WILLS—Legatees—Who Are. — The giving in a will to testator's wife of money in conformity with a marriage settlement held not to make her a legatee within other provisions of the will.—IN RE PENTZ'S ESTATE, Pa., 49 Atl. Rep. 361.

188. WITNESSES— Cross-Examination — Defendant.—Defendant, in an action to contest his right to an office, held not subject to cross examination as to campaign expenses not referred to in his testimony in chief.—BRADLEY V. CLARK, Cal., 65 Pac. Rep. 395,

189. WITNESSES — Privilege — Incrimination.— A witness against a person charged with violations of the purity of elections act held not privileged from testifying on the ground that his testimony would tend to criminate himself and degrade his character.—BRADLEY V. CLARK, Cal., 65 Pac. Rep. 395.

190. WORK AND LABOR— Separating Items.— On a count for services rendered, where plaintiff grouped three items and alleged a single charge for the value of the services in all, it was not improper for the court to segregate the items and allow judgment for one of them.—CONROY V. WALTERS, Cal., 65 Pac. Rep. 387.